

EXHIBIT A

Nos. 22-55988, 22-56036

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

AL OTRO LADO, INC., *et al.*,
Pls.-Appellees/Cross-Appellants,

v.

ALEJANDRO MAYORKAS, Secretary of Homeland Security, *et al.*,
Defendants-Appellants/Cross-Appellees,

and

The EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,
Appellant/Cross-Appellee.

APPEAL FROM FINAL JUDGMENT OF THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA
No. 17-cv-02366-BAS-KSC

**APPELLEES/CROSS-APPELLANTS' SUPPLEMENTAL EXCERPTS OF
RECORD – VOLUME 3 UNDER SEAL**

Stephen M. Medlock
Evan Miller
Rami Abdallah E. Rashmawi
VINSON & ELKINS LLP
2200 Pennsylvania Ave., N.W., Ste. 500 W.
Washington, DC 20036
(202) 639-6500

Baher Azmy
Angelo Guisado
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, NY 10012
(212) 614-6464

Ori Lev
MAYER BROWN LLP
1999 K Street, N.W.
Washington, DC 20006
(202) 263-3270

Matthew H. Marmolejo
MAYER BROWN LLP
333 S. Grand Ave., 47th Floor
Los Angeles, CA 90071
(213) 229-9500

Additional Counsel listed inside cover

Melissa Crow
CENTER FOR GENDER & REFUGEE STUDIES
1121 14th Street, N.W., Suite 200
Washington, DC 20005
(202) 355-4471

Neela Chakravartula
Anne Dutton
CENTER FOR GENDER & REFUGEE STUDIES
200 McAllister Street
San Francisco, CA 94102
(415) 565-4877

Katherine Melloy Goettel
Gianna Borroto
Suchita Mathur
AMERICAN IMMIGRATION COUNCIL
1331 G St NW, Suite 200
Washington, DC 20005
(202) 507-7552

Sarah Rich
SOUTHERN POVERTY LAW CENTER
150 E. Ponce de Leon Ave., Suite 340
Decatur, GA 30030
(404) 521-6700

Rebecca Cassler
SOUTHERN POVERTY LAW CENTER
201 Saint Charles Avenue, Suite 2000
New Orleans, LA 70170
(504) 486-8982

Counsel for Appellees/Cross Appellants

1 MAYER BROWN LLP
Matthew H. Marmolejo (CA Bar No. 242964)
2 *mmarmolejo@mayerbrown.com*
350 S. Grand Avenue
3 25th Floor
Los Angeles, CA 90071-1503
4 Ori Lev (DC Bar No. 452565)
(*pro hac vice*)
5 *olev@mayerbrown.com*
Stephen M. Medlock (VA Bar No. 78819)
6 (*pro hac vice*)
smedlock@mayerbrown.com
7 1999 K Street, N.W.
Washington, D.C. 20006
8 Telephone: +1.202.263.3000
Facsimile: +1.202.263.3300
9

SOUTHERN POVERTY LAW CENTER
10 Melissa Crow (DC Bar No. 453487)
(*pro hac vice*)
11 *melissa.crow@splcenter.org*
1101 17th Street, N.W., Suite 705
12 Washington, D.C. 20036
Telephone: +1.202.355.4471
13 Facsimile: +1.404.221.5857

14 *Additional counsel listed on next page*
15 *Attorneys for Plaintiffs*

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 Al Otro Lado, Inc., *et al.*,

19 Plaintiffs,

20 v.

21 Chad F. Wolf,¹ *et al.*,

22 Defendants.
23
24
25
26
27
28

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 15 IN SUPPORT OF
PLAINTIFFS' REPLY IN SUPPORT
OF THEIR MOTION FOR
SUMMARY JUDGMENT**

FILED UNDER SEAL VERSION

¹ Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

1 CENTER FOR CONSTITUTIONAL RIGHTS

2 Baher Azmy (NY Bar No. 2860740) (*pro hac vice*)

3 *bazmy@ccrjustice.org*

4 Ghita Schwarz (NY Bar No. 3030087) (*pro hac vice*)

5 *gschwarz@ccrjustice.org*

6 Angelo Guisado (NY Bar No. 5182688) (*pro hac vice*)

7 *aguisado@ccrjustice.org*

8 666 Broadway, 7th Floor

9 New York, NY 10012

10 Telephone: +1.212.614.6464

11 Facsimile: +1.212.614.6499

12 SOUTHERN POVERTY LAW CENTER

13 Sarah Rich (GA Bar No. 281985) (*pro hac vice*)

14 *sarah.rich@splcenter.org*

15 Rebecca Cassler (MN Bar No. 0398309) (*pro hac vice*)

16 *rebecca.cassler@splcenter.org*

17 150 E. Ponce de Leon Ave., Suite 340

18 Decatur, GA 30030

19 Telephone: +1.404.521.6700

20 Facsimile: +1.404.221.5857

21 AMERICAN IMMIGRATION COUNCIL

22 Karolina Walters (DC Bar No. 1049113) (*pro hac vice*)

23 *kwalters@immcouncil.org*

24 1331 G St. NW, Suite 200

25 Washington, D.C. 20005

26 Telephone: +1.202.507.7523

27 Facsimile: +1.202.742.5619

28

From: Nicole Ramos
To: [CRCL Compliance](#)
Subject: CBP Refusing to Process Mexican Asylum Seekers @ San Ysidro POE
Date: Monday, February 6, 2017 6:22:26 AM
Attachments: Maria Guadalupe G-28 .pdf

Dear CRCL Compliance Officer:

My name is Nicole Elizabeth Ramos (DOB 06/08/1979). I am a U.S. licensed immigration attorney working in the Tijuana border region with asylum seekers that wish to turn themselves over to American authorities at the San Ysidro port-of-entry. I am barred by the State of New York, and a former federal public defender. I am now writing to file a complaint regarding discrimination based on nationality by CBP at the San Ysidro / Pedwest Port of Entry.

My client, [REDACTED] presented herself at the port-of-entry on February 4th, 2017. During that encounter with CBP she stated that she was seeking asylum. This occurred in the presence of several others.

Following, [REDACTED] was taken back for processing. In less than 24 hours she had been removed to Mexico by CBP officers. She refused to sign documents for her removal and expressed a fear of return, yet she was removed anyway. Even more disturbing, is that specifically submitted my G-28 Notice of Representation to the CBP POE supervisor email, notifying them in writing that this client was an asylum seeker, and that she was requesting a credible fear interview.

She reported being coerced by CBP officers into recanting her fear of return, and told that simply, by virtue of her being Mexican, she did not qualify for asylum. She was threatened, that if she did not withdraw her asylum claim, that the "next time she tried" to seek asylum, she would be facing a deportation. Further, [REDACTED] brought with her a declaration outlining her fear of return, and other case documents, none of which were returned to her.

Immediately upon learning that [REDACTED] had been removed, I traveled to the port-of-entry to meet her. I accompanied her back to the gate of the port-of-entry and requested to speak with a supervisor.

I spoke with Supervisor DeJesus, and explained that CBP officers had been coercive and verbally abusive with [REDACTED] and that she had been removed despite her request, and my clear written request, that she be referred to an asylum officer for a credible fear interview.

Supervisor DeJesus then advised me that they would "take her back and decide what she qualifies for." That is not the legal standard. Under Title 8, Section 1225 of the U.S. Code, CBP officers must refer an asylum seeker to an asylum officer for a credible fear interview. It is certainly not the function of CBP to determine who qualifies for asylum, let alone that citizens of an entire country do not qualify. Today will be [REDACTED] third attempt at applying for asylum, despite CBP repeating to her that "there is no asylum for Mexicans."

Additionally, this is the third case in less than 30 days of Mexican women being coerced into withdrawing their asylum claims, berated for hours until they gave up. The two other complaints will be forthcoming.

This is a pattern and practice at the San Ysidro port-of-entry, and I personally, have interviewed seven families to which this has happened in the past three months.

I am requesting that the agency take action, and initiate appropriate investigations, making contact with actually impacted parties. If contacted, I am able to connect investigators with asylums seekers to which this has happened. Please do not ignore this. One day CBP is going to illegally turn away an asylum seeker, and that human rights violation may be the thing that gets them killed.

Regards,

Nicole Ramos

Nicole Ramos, Esq.

(Admitted in NY - practice consists exclusively of federal immigration matters)

Law Office of Nicole Ramos
511 E. San Ysidro Blvd., # 333
San Ysidro, CA 92173
(664) 526-0145 (MX)
(619) 309-1539 (USA)

*"A lawyer is either a social engineer or a parasite on society."
Charles Hamilton Houston*

This e-mail contains PRIVILEGED and CONFIDENTIAL information intended only for the use of the addressee(s) named above. If you are not the intended recipient of this e-mail, or an authorized agent employee responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination or copying of this e-mail is strictly prohibited. If you received this e-mail in error, please notify us by reply e-mail. Thank you for your cooperation.

*"En la sociedad, un abogado es un ingeniero social o un parásito"
Charles Hamilton Houston*

Este correo electrónico contiene información PRIVILEGIADA y CONFIDENCIAL destinada únicamente para el uso del destinatario(s) nombrado anteriormente. Si usted no es el destinatario original de este e-mail, o un empleado agente autorizado responsable de entregar este mensaje a su destinatario, se le notifica que cualquier disseminación o duplicación de este correo electrónico es estrictamente prohibido. Si ha recibido este correo electrónico por error, por favor notifique por correo electrónico de respuesta. Gracias por su cooperación.



**Notice of Entry of Appearance
as Attorney or Accredited Representative**

Department of Homeland Security

DHS
Form G-28
OMB No. 1615-0105
Expires 03/31/2018

Part 1. Information About Attorney or Accredited Representative

1. USCIS ELIS Account Number (if any)

▶

Name and Address of Attorney or Accredited Representative

- 2.a. Family Name (Last Name)
- 2.b. Given Name (First Name)
- 2.c. Middle Name
- 3.a. Street Number and Name
- 3.b. Apt. ☐ Ste. ☒ Flr.
- 3.c. City or Town
- 3.d. State 3.e. ZIP Code
- 3.f. Province
- 3.g. Postal Code
- 3.h. Country
4. Daytime Telephone Number
5. Fax Number
6. E-Mail Address (if any)
7. Mobile Telephone Number (if any)

Part 2. Notice of Appearance as Attorney or Accredited Representative

This appearance relates to immigration matters before
(Select **only one** box):

- 1.a. ☐ USCIS

- 1.b. List the form numbers

- 2.a. ☐ ICE

- 2.b. List the specific matter in which appearance is entered

- 3.a. ☒ CBP

- 3.b. List the specific matter in which appearance is entered

I enter my appearance as attorney or accredited representative at the request of:

4. Select **only one** box:

☐ Applicant ☐ Petitioner ☐ Requestor

☒ Respondent (ICE, CBP)

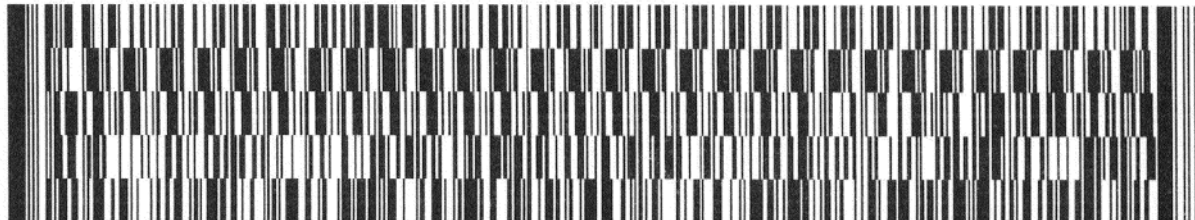
Information About Applicant, Petitioner, Requestor, or Respondent

- 5.a. Family Name (Last Name)

- 5.b. Given Name (First Name)

- 5.c. Middle Name

6. Name of Company or Organization (if applicable)



Part 2. Notice of Appearance as Attorney or Accredited Representative (continued)**Information About Applicant, Petitioner, Requestor, or Respondent (continued)**

7. USCIS ELIS Account Number (if any)
 8. Alien Registration Number (A-Number) or Receipt Number
 9. Daytime Telephone Number
 10. Mobile Telephone Number (if any)
 11. E-Mail Address (if any)

Mailing Address of Applicant, Petitioner, Requestor, or Respondent

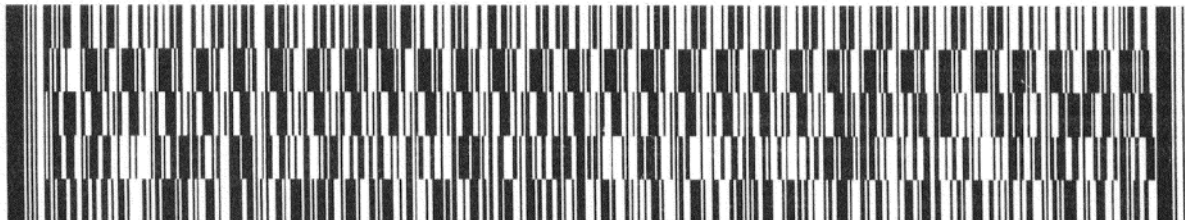
NOTE: Provide the mailing address of the applicant, petitioner, requestor, or respondent. **Do not** provide the business mailing address of the attorney or accredited representative **unless** it serves as the safe mailing address on the application, petition, or request being filed with this Form G-28.

- 12.a. Street Number and Name 511 E San Qsidro
 12.b. Apt. ☐ Ste. ☒ Flr. ☐ 333
 12.c. City or Town San Qsidro
 12.d. State CA 12.e. ZIP Code 92173
 12.f. Province
 12.g. Postal Code
 12.h. Country United States

Part 3. Eligibility Information for Attorney or Accredited Representative

Select **all** applicable items.

- 1.a. ☒ I am an attorney eligible to practice law in, and a member in good standing of, the bar of the highest courts of the following states, possessions, territories, commonwealths, or the District of Columbia. (If you need additional space, use **Part 6**.)
 Licensing Authority New York State Bar
 1.b. Bar Number (if applicable) 466-0445
 1.c. Name of Law Firm Law Office of Nicole Ramos
 1.d. I (choose one) ☒ am not ☐ am subject to any order of any court or administrative agency disbaring, suspending, enjoining, restraining, or otherwise restricting me in the practice of law. If you are subject to any orders, explain in the space below. (If you need additional space, use **Part 6**.)
 2.a. ☐ I am an accredited representative of the following qualified nonprofit religious, charitable, social service, or similar organization established in the United States, so recognized by the Department of Justice, Board of Immigration Appeals, in accordance with 8 CFR 292.2. Provide the name of the organization and the expiration date of accreditation.
 2.b. Name of Recognized Organization
 2.c. Date accreditation expires (mm/dd/yyyy) ▶



Part 3. Eligibility Information for Attorney or Accredited Representative (continued)

3. ☐ I am associated with _____, the attorney or accredited representative of record who previously filed Form G-28 in this case, and my appearance as an attorney or accredited representative is at his or her request.

NOTE: If you select this item, also complete **Item Numbers 1.a. - 1.b. or Item Numbers 2.a. - 2.c.** in **Part 3.** (whichever is appropriate).

- 4.a. ☐ I am a law student or law graduate working under the direct supervision of the attorney or accredited representative of record on this form in accordance with the requirements in 8 CFR 292.1(a)(2)(iv).

4.b. Name of Law Student or Law Graduate

Part 4. Applicant, Petitioner, Requestor, or Respondent Consent to Representation, Contact Information, and Signature**Consent to Representation and Release of Information**

1. I have requested the representation of and consented to being represented by the attorney or accredited representative named in **Part 1.** of this form. According to the Privacy Act of 1974 and DHS policy, I also consent to the disclosure to the named attorney or accredited representative of any record pertaining to me that appears in any system of records of USCIS, ICE or CBP.

When you (the applicant, petitioner, requestor, or respondent) are represented, DHS will send notices to both you and your attorney or accredited representative either through mail or electronic delivery.

DHS will also send the Form I-94, Arrival Departure Record, to you **unless** you select **Item Number 2.a.** in **Part 4.** All secure identity documents and Travel Documents will be sent to you (the applicant, petitioner, requestor, or respondent) at your U.S. mailing address **unless** you ask us to send your secure identity documents to your attorney of record or accredited representative.

If you do not want to receive original notices or secure identity documents directly, but would rather have such notices and documents sent to your attorney of record or accredited representative, please select **all applicable** boxes below:

- 2.a. ☒ I request DHS send any notice (including Form I-94) on an application, petition, or request to the U.S. business address of my attorney of record or accredited representative as listed in this form. I understand that I may change this election at any future date through written notice to DHS.
- 2.b. ☒ I request that DHS send any secure identity document, such as a Permanent Resident Card, Employment Authorization Document, or Travel Document, that I am approved to receive and authorized to possess, to the U.S. business address of my attorney of record or accredited representative as listed in this form or to a designated military or diplomatic address for pickup in a foreign country (if permitted). I consent to having my secure identity document sent to my attorney of record or accredited representative's U.S. business address and understand that I may request, at any future date and through written notice to DHS, that DHS send any secure identity document to me directly.

- 3.a. Signature of Applicant, Petitioner, Requestor, or Respondent

→ _____

- 3.b. Date of Signature (mm/dd/yyyy) ▶ 02/04/2017

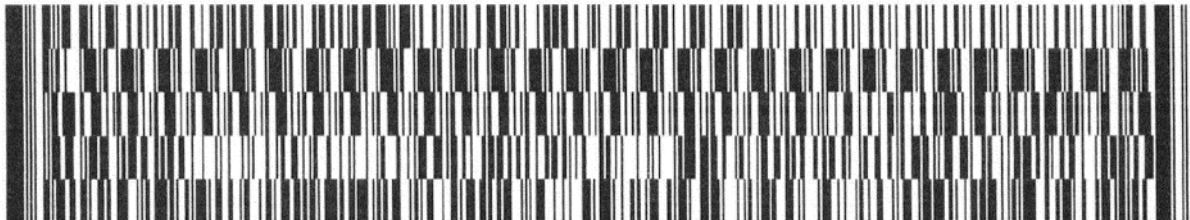
Part 5. Signature of Attorney or Accredited Representative

I have read and understand the regulations and conditions contained in 8 CFR 103.2 and 292 governing appearances and representation before the Department of Homeland Security. I declare under penalty of perjury under the laws of the United States that the information I have provided on this form is true and correct.

1. Signature of Attorney or Accredited Representative

2. Signature of Law Student or Law Graduate

3. Date of Signature (mm/dd/yyyy) ▶ 02/04/2017



Part 6. Additional Information

Use the space provided below to provide additional information pertaining to **Part 3, Item Numbers 1.a. - 1.d.** or to provide your U.S. business address for purposes of receiving secure identity documents for your client (if your client has consented to your receipt of such documents under **Part 4.**)

1. The first step in the process of identifying a problem is to recognize that a problem exists. This is often done by comparing current performance with a desired state or goal. For example, if a company's sales are declining, it may indicate a problem with its marketing strategy or product quality.

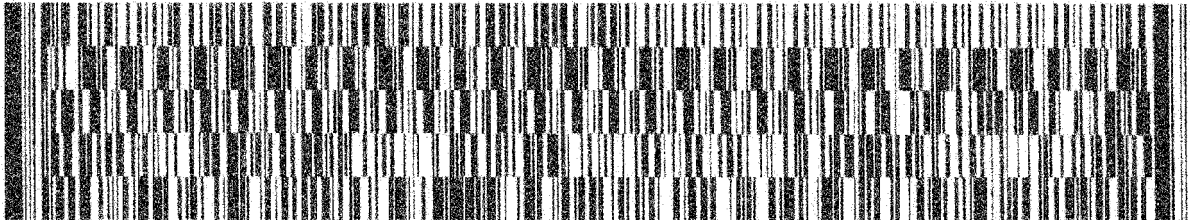
2. Once a problem is identified, the next step is to define the problem more precisely. This involves determining the scope of the problem, its causes, and its effects. For example, if sales are declining, it is important to determine whether the problem is specific to a particular market or product line, and whether it is due to external factors (e.g., economic conditions) or internal factors (e.g., poor management decisions).

3. The third step is to gather information about the problem. This can be done through a variety of methods, including interviews with stakeholders, surveys, and analysis of data. The goal is to collect as much relevant information as possible to understand the problem better and identify potential solutions.

4. After gathering information, the next step is to analyze the data and identify the root cause of the problem. This often involves using tools such as the fishbone diagram (also known as the Ichioka diagram) to map out the causes and effects of the problem. The goal is to identify the underlying factors that are contributing to the problem, rather than just the symptoms.

5. Once the root cause is identified, the next step is to develop a plan to address the problem. This plan should outline the specific actions that need to be taken to solve the problem, and it should also identify the resources needed to implement the plan. For example, if the problem is declining sales, the plan might involve developing a new marketing strategy, improving product quality, or offering discounts to customers.

6. The final step in the process is to implement the plan and monitor the results. This involves putting the plan into action and tracking progress over time. If the plan is successful, the problem should be resolved and performance should improve. If the problem persists, it may be necessary to revise the plan and try a different approach.



Form G-28 05/05/16 Y

Page 4 of 4

Confidential

AOL-DEF-00014805

3-SER-513

1 MAYER BROWN LLP
2 Matthew H. Marmolejo (CA Bar No. 242964)
3 mmarmolejo@mayerbrown.com
4 350 S. Grand Avenue
5 25th Floor
6 Los Angeles, CA 90071-1503
7 Ori Lev (DC Bar No. 452565)
8 (pro hac vice)
9 olev@mayerbrown.com
10 Stephen M. Medlock (VA Bar No. 78819)
11 (pro hac vice)
12 smedlock@mayerbrown.com
13 1999 K Street, N.W.
14 Washington, D.C. 20006
15 Telephone: +1.202.263.3000
16 Facsimile: +1.202.263.3300

17 SOUTHERN POVERTY LAW CENTER
18 Melissa Crow (DC Bar No. 453487)
19 (pro hac vice)
20 melissa.crow@splcenter.org
21 1101 17th Street, N.W., Suite 705
22 Washington, D.C. 20036
23 Telephone: +1.202.355.4471
24 Facsimile: +1.404.221.5857

25 *Additional counsel listed on next page*
26 *Attorneys for Plaintiffs*

27 **UNITED STATES DISTRICT COURT**
28 **SOUTHERN DISTRICT OF CALIFORNIA**

1 Al Otro Lado, Inc., *et al.*,

2 Plaintiffs,

3 v.

4 Chad F. Wolf,¹ *et al.*,

5 Defendants.

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 18 IN SUPPORT OF
PLAINTIFFS' REPLY IN SUPPORT
OF THEIR MOTION FOR
SUMMARY JUDGMENT**

FILED UNDER SEAL VERSION

¹ Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

1 CENTER FOR CONSTITUTIONAL RIGHTS

2 Baher Azmy (NY Bar No. 2860740) (*pro hac vice*)

3 *bazmy@ccrjustice.org*

4 Ghita Schwarz (NY Bar No. 3030087) (*pro hac vice*)

5 *gschwarz@ccrjustice.org*

6 Angelo Guisado (NY Bar No. 5182688) (*pro hac vice*)

7 *aguisado@ccrjustice.org*

8 666 Broadway, 7th Floor

9 New York, NY 10012

10 Telephone: +1.212.614.6464

11 Facsimile: +1.212.614.6499

12 SOUTHERN POVERTY LAW CENTER

13 Sarah Rich (GA Bar No. 281985) (*pro hac vice*)

14 *sarah.rich@splcenter.org*

15 Rebecca Cassler (MN Bar No. 0398309) (*pro hac vice*)

16 *rebecca.cassler@splcenter.org*

17 150 E. Ponce de Leon Ave., Suite 340

18 Decatur, GA 30030

19 Telephone: +1.404.521.6700

20 Facsimile: +1.404.221.5857

21 AMERICAN IMMIGRATION COUNCIL

22 Karolina Walters (DC Bar No. 1049113) (*pro hac vice*)

23 *kwalters@immcouncil.org*

24 1331 G St. NW, Suite 200

25 Washington, D.C. 20005

26 Telephone: +1.202.507.7523

27 Facsimile: +1.202.742.5619

28

Case Summary Report

C17-CBP-SND-13321

Title: FNU LNU; CBP; San Diego, CA

Date Rcd: 4/13/2017 Date Assigned: Date Opened: 4/13/2017 Date Closed: 4/19/2017

Rcd Method: DHS Connect

Agent:

Affected Agency: U.S. Customs and Border Protection (DHS)

PrimaryOffice: San Diego, CA

Ref Agency: Office for Civil Rights and Civil Liberties

Alleg Type: Civil Rights / Civil Liberties \ Other Civil Rights/Civil Liberties

Special: No Privacy: No Confidential: No Dollar Loss: \$0.00

Joint Agency:

Ref Cases: 17-07-CBP-0258

CL-17-001345

Comments: On April 10, 2017, CRCL received an email from Nicole Ramos on behalf of [REDACTED] a Honduran asylum seeker who was allegedly turned away by CBP Sergeant Pacheco and CBP Shift Chief Soto on April 9, 2017. Specifically, Ms. Ramos alleges that when she presented [REDACTED] and her child to CBP that they were told they needed to go to the INAMI (Mexican immigration) to be placed on a list and obtain a ticket. Ms. Ramos informed Chief Soto that it was against the law to turn the asylum seeker away, and attempted to provide Chief Soto with documentation from the Instituto Nacioal de Migracion, which officially stated that its agency is not responsible for giving asylum seekers tickets to seek asylum in the United States. However, Chief Soto stood firm in his refusal to process the individual.

People - Subjects

LNU, FNU

Aka:

POB City:

DOB:

Address:

DHS Emp: YES

Phone:

Email:

Home

SSN:

EOD:

POB State:

Alien Number:

Company Name:

City:

State:

Zip:

DHS Exec: No

LNU, FNU

Aka:

POB City:

DOB:

Address:

DHS Emp: YES

Phone:

Email:

Work

SSN:

EOD:

POB State:

Alien Number:

Company Name:

City:

State:

Zip:

DHS Exec: No

IMPORTANT NOTICE

This report is intended solely for the official use of the Department of Homeland Security, or any entity receiving a copy directly from the Office of Inspector General. This report remains the property of the Office of Inspector General, and no secondary distribution may be made, in whole or in part, outside the Department of Homeland Security, without prior authorization by the Office of Inspector General. Public availability of the report will be determined by the Office of Inspector General under 5 U.S.C. 552. Unauthorized disclosure of this report may result in criminal, civil, or administrative penalties.

1 of 3 Pages

Case Summary Report

C17-CBP-SND-13321

People - Complainants

<p>██████████</p> <p>Aka:</p> <p>POB City:</p> <p>DOB:</p> <p>Address:</p> <p>DHS Emp: No</p> <p>Phone:</p> <p>Email:</p>	<p>Home</p> <p>SSN:</p> <p>POB State:</p> <p>Alien Number:</p> <p>Company Name:</p> <p>City:</p> <p>DHS Exec: No</p>	<p>EOD:</p> <p>State: Zip:</p>
---	---	--------------------------------------

<p>██████████</p> <p>Aka:</p> <p>POB City:</p> <p>DOB:</p> <p>Address:</p> <p>DHS Emp: No</p> <p>Phone:</p> <p>Email:</p>	<p>Work</p> <p>SSN:</p> <p>POB State:</p> <p>Alien Number:</p> <p>Company Name:</p> <p>City:</p> <p>DHS Exec: No</p>	<p>EOD:</p> <p>State: Zip:</p>
---	---	--------------------------------------

People - Witness

People - Victims

Violations

Case Dates:

Received:	4/13/2017	Assigned:	Reassigned:
Prb Referral:		Retention:	Acknowledged:
Incident Start:	4/13/2017	Incident End:	Approx: No
	12:00:00 AM		
Police Report:		Police Rpt #:	
Notified:		Reesponse:	Referred:
Investigation Comp:	4/13/2017	Closed:	4/19/2017
	12:00:00 AM		
Prb Decision:	4/13/2017	Reopened:	
	12:00:00 AM		

IMPORTANT NOTICE

This report is intended solely for the official use of the Department of Homeland Security, or any entity receiving a copy directly from the Office of Inspector General. This report remains the property of the Office of Inspector General, and no secondary distribution may be made, in whole or in part, outside the Department of Homeland Security, without prior authorization by the Office of Inspector General. Public availability of the report will be determined by the Office of Inspector General under 5 U.S.C. 552. Unauthorized disclosure of this report may result in criminal, civil, or administrative penalties.

Case Summary Report

C17-CBP-SND-13321

Location

Airport:		Location:		
City:	San Diego	State:	CA	Zip:
Facility:		FFDO Airline:		
Investigation Loc:		Region:		
Transport Mode:				

Technical

Disposition - Criminal

Dispositions - Civil

Dispositions - Admin

MA

ROI / Referral

Case Type:	Complaint	Referral Date:	4/19/2017	Response Date:	4/19/2017	Closed Date:	4/19/2017
Action:	Referred - No Reply	Agency Referred:	Office for Civil Rights and Civil Liberties				

Collaterals

Uploaded Documents

Date Prepared:		Grand Jury:	No
Doc Type:	Complaint Origination Document(s)		
Description:			

Date Prepared:	4/19/2017	Grand Jury:	No
Doc Type:	Box 1		
Description:	C1713321 _ 17-07-CBP-0258		

Date Prepared:	4/19/2017	Grand Jury:	No
Doc Type:	Other Document(s)		
Description:	SOTO MEMO.pdf		

IMPORTANT NOTICE

This report is intended solely for the official use of the Department of Homeland Security, or any entity receiving a copy directly from the Office of Inspector General. This report remains the property of the Office of Inspector General, and no secondary distribution may be made, in whole or in part, outside the Department of Homeland Security, without prior authorization by the Office of Inspector General. Public availability of the report will be determined by the Office of Inspector General under 5 U.S.C. 552. Unauthorized disclosure of this report may result in criminal, civil, or administrative penalties.

3 of 3 Pages

1 MAYER BROWN LLP
Matthew H. Marmolejo (CA Bar No. 242964)
2 *mmarmolejo@mayerbrown.com*
350 S. Grand Avenue
3 25th Floor
Los Angeles, CA 90071-1503
4 Ori Lev (DC Bar No. 452565)
(*pro hac vice*)
5 *olev@mayerbrown.com*
Stephen M. Medlock (VA Bar No. 78819)
6 (*pro hac vice*)
smedlock@mayerbrown.com
7 1999 K Street, N.W.
Washington, D.C. 20006
8 Telephone: +1.202.263.3000
Facsimile: +1.202.263.3300
9

SOUTHERN POVERTY LAW CENTER
10 Melissa Crow (DC Bar No. 453487)
(*pro hac vice*)
11 *melissa.crow@splcenter.org*
1101 17th Street, N.W., Suite 705
12 Washington, D.C. 20036
Telephone: +1.202.355.4471
13 Facsimile: +1.404.221.5857

14 *Additional counsel listed on next page*
15 *Attorneys for Plaintiffs*

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 Al Otro Lado, Inc., *et al.*,

19 Plaintiffs,

20 v.

21 Chad F. Wolf,¹ *et al.*,

22 Defendants.
23
24
25
26
27
28

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 22 IN SUPPORT OF
PLAINTIFFS' REPLY IN SUPPORT
OF THEIR MOTION FOR
SUMMARY JUDGMENT**

FILED UNDER SEAL VERSION

¹ Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

1 CENTER FOR CONSTITUTIONAL RIGHTS

2 Baher Azmy (NY Bar No. 2860740) (*pro hac vice*)

3 *bazmy@ccrjustice.org*

4 Ghita Schwarz (NY Bar No. 3030087) (*pro hac vice*)

5 *gschwarz@ccrjustice.org*

6 Angelo Guisado (NY Bar No. 5182688) (*pro hac vice*)

7 *aguisado@ccrjustice.org*

8 666 Broadway, 7th Floor

9 New York, NY 10012

10 Telephone: +1.212.614.6464

11 Facsimile: +1.212.614.6499

12 SOUTHERN POVERTY LAW CENTER

13 Sarah Rich (GA Bar No. 281985) (*pro hac vice*)

14 *sarah.rich@splcenter.org*

15 Rebecca Cassler (MN Bar No. 0398309) (*pro hac vice*)

16 *rebecca.cassler@splcenter.org*

17 150 E. Ponce de Leon Ave., Suite 340

18 Decatur, GA 30030

19 Telephone: +1.404.521.6700

20 Facsimile: +1.404.221.5857

21 AMERICAN IMMIGRATION COUNCIL

22 Karolina Walters (DC Bar No. 1049113) (*pro hac vice*)

23 *kwalters@immcouncil.org*

24 1331 G St. NW, Suite 200

25 Washington, D.C. 20005

26 Telephone: +1.202.507.7523

27 Facsimile: +1.202.742.5619



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

March 8, 2019

MEMORANDUM FOR: File OSC Inquiry Metering Tecate POE

THROUGH: Matthew Neuburger
Director
Special Reviews Group

FROM: [REDACTED]
Investigative Counsel
[REDACTED]
Senior Program Analyst

SUBJECT: *Memorandum of Interview with [REDACTED]
(Follow-up), Assistant Port Director, Port of Otay
Mesa, CA*

On February 15, 2019, [REDACTED] Investigative Counsel, Special Reviews Group (SRG), Office of Inspector General (OIG), and [REDACTED] Senior Program Analyst, SRG, OIG conducted a teleconference with [REDACTED] Assistant Port Director (APD), Port of Otay Mesa, Office of Field Operations (OFO), U.S. Customs and Border Protection (CBP) regarding allegations made to the U.S. Office of Special Counsel (OSC) that employees at the Port of Tecate, California, engage in conduct that may constitute a violation of law, rule, or regulation. OSC referred this matter to the OIG for investigation. We followed up with Silva to discuss relevant email exchanges that the OIG had obtained involving him. This memorandum is not a verbatim transcript of the interview and includes the thoughts and impressions of OIG personnel.

[Note: At the start of the meeting, the OIG emailed [REDACTED] a password protected PDF document containing a set of three email exchanges for discussion during the interview. For reference, these emails are included as an attachment to this memorandum.]

[REDACTED] provided the following information in substance:



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Email 1

The OIG provided [REDACTED] time to read the first email exchange [page 1-2 of attached email packet]. When asked to explain [REDACTED] role, [REDACTED] said that [REDACTED] was a GS-14 manager at the San Diego Field Office. The San Diego Field Office oversees the six ports of entry (POEs) in the region. The Director of the San Diego Field Office has several Assistant Directors. [REDACTED] was working for the Assistant Director for Border Security at the San Diego Field Office.

When asked whether he recalled this email exchange, [REDACTED] said, "yes." The OIG asked why Supervisory CBP Officer (SCBPO) [REDACTED] had asked [REDACTED] to call [REDACTED]. [REDACTED] explained that [REDACTED] had not called him directly, and SCBPO [REDACTED] had taken a message for him.

The OIG asked why the San Diego Field Office was asking about Tecate's process for handling asylum claims, and seeking to confirm that Tecate was not returning anyone to Mexico. [REDACTED] said that there was a time when media was asking the San Diego Field Office Director, [REDACTED] questions in this regard. [REDACTED] had provided guidance to the Port Directors during a conference call that he wanted them to communicate to their personnel not to turn back any credible fear asylum claims.

The OIG asked about the first bullet in the email, which states that the Port of Tecate does not return anyone expressing fear of returning back to Mexico. The OIG asked whether [REDACTED] recalled that being the message given to personnel at the Port of Tecate. [REDACTED] said, "yes," this was the message given to personnel at the port.

The OIG asked about the second bullet, which discusses an instance when an alien was returned to Mexico because he had a waitlist number from Tijuana. Silva said that he could not recall the details about this incident, such as where this individual was from.

The OIG mentioned seeing a shift log from February 2017, which indicated that a man with a Russian passport entered pedestrian primary requesting asylum and was told to go to San Ysidro. [REDACTED] did not know if this could have been the same instance described in the second bullet of the email.

The OIG referred [REDACTED] to the top of the email where it says, "currently we are not returning anyone back," and asked whether at some other time there had been a different policy. Silva said, "no." However, there had been



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

instances several years before of individuals from the Mexican state of Michoacán who were returned to Mexico. [REDACTED] said this was explained in the third bullet of the email and he noted he had raised this issue during the OIG's previous interview of him.

Email 2

The OIG provided [REDACTED] time to read the second email [page 4 of attached email packet]. The OIG referred [REDACTED] to the last sentence, which said that, "Port Director [REDACTED] will be sending out an email to the troops addressing this issue," and asked [REDACTED] if he recalled sending out an email related to this matter. [REDACTED] said that he recalled this incident, but he was unable to find the email he had sent. [Note: During our February 8, 2019 interview, the OIG had asked [REDACTED] to look for any guidance he had sent out in response to incidents when an asylum seeker was redirected.]

Seeing that there were multiple emails over a period of time on this matter, the OIG asked whether there was concern that supervisors might not have been following instruction for handling asylum seekers. [REDACTED] confirmed that the recipients of this email were the supervisors at the Port of Tecate. [REDACTED] said that he did not remember the particulars of this incident [REDACTED] said that it appears that in this instance a line Officer took action without properly clearing it with a supervisor. [REDACTED] said this was a reminder that Officers must consult their supervisor prior to taking any such action.

The OIG asked whether [REDACTED] or Assistant Port Director [REDACTED] had a concern about whether supervisors were properly communicating the directive not to return asylum seekers to Mexico. [REDACTED] said that their concern was that Officers might be acting on their own without consulting their supervisors.

Email 3

The OIG provided [REDACTED] time to read the third email exchange [page 7-9 of attached email packet].

The OIG asked [REDACTED] whether he remembered this email exchange. [REDACTED] said that he did. The OIG referred [REDACTED] to the bottom of page 6 and top of page 7, where [REDACTED] wrote about his concern that accepting asylum seekers at the Port of Tecate and transferring them to the Port of San Ysidro could become a way for asylum seekers to avoid long waits at the Port of San Ysidro. [REDACTED] said that the Port of Tecate is small. There are approximately



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

█ Officers staffing the port at any one time. There are two pedestrian lanes, and two vehicle passenger lanes. The port does not have asylum expertise, so they have to transfer individuals seeking asylum to the Port of San Ysidro. If asylum seekers started coming in through the Port of Tecate to avoid long waits at the Port of San Ysidro, it would be a problem because of the lack of resources, knowledge, and the time it takes to transport individuals to the Port of San Ysidro. Transporting individuals from the Port of Tecate to the Port of San Ysidro requires a several hour drive along winding roads. In this email, Silva said he was stating his concern and conveying that they might have to offer voluntary withdrawal as an alternative if the port started getting more asylum cases. █ said that withdrawal of an individual's request for asylum at Tecate would have to be voluntary. The OIG asked whether the port had ever had to offer withdrawals. █ said, "no," it did not become necessary. █ believed that part of the reason was that on the Mexican side of the border, the city of Tecate was directing individuals toward larger ports. █ said that in Mexico the city of Tecate's population is about 80-100,000 people, and the outskirts nearly join with Tijuana.

The OIG referred █ to the top of this email exchange on page 6, and asked what was meant by, "sending anyone claiming credible fear down the hill." █ said that this referred to accepting asylum seekers at the Port of Tecate and transferring them to the Port of San Ysidro. The OIG asked whether in this case the Port of Tecate accepted the Eritreans and drove them to the Port of San Ysidro. █ said that was correct. The OIG asked whether there were other instances when individuals seeking asylum were sent "down the hill?" █ said, "no," he did not remember seeing any other instances after this one while at the Port of Tecate. [Note: █ left the Port of Tecate in February 2018.] He could not remember if he and APD █ had a conversation after Romero posed the question in his email.

The OIG asked whether anything else like this came up between December and February, when █ transferred to the Port of Otay Mesa. █ again said no and that he and his APDs were frequently communicating that the port had to accept all individuals seeking asylum. When asked whether he had ever heard that this guidance was not being followed, █ said not at that time.

█ said that Officers were concerned that the Port of Tecate did not have the staffing to handle an influx of asylum seekers, and the port could be quickly overwhelmed. The OIG asked whether Officers and supervisors



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

might have sought to address their concerns by redirecting asylum seekers. [REDACTED] said, "no," he had not heard that this happened. The OIG asked whether it was possible for Officers and supervisors to do this without [REDACTED] knowing. [REDACTED] said, "yes," it was possible and that was why they were doing so much messaging. Officers should not be able to return anyone seeking asylum to Mexico without their supervisor's approval. During the night shift, first line supervisors would be the Watch Commander. The Port Director and APD are not on duty.

Attachment

[PDF containing the three email exchanges discussed during this interview.]

From: SILVA, CARLOS NMI
To: ROMERO, JUAN J; RIVERA, CARLOS GERMAN
Subject: FW: CF Applicants
Date: Wednesday, May 17, 2017 6:44:55 PM
Attachments: FW Credible Fear - Processing Expedited Removal Cases.msg

FYI

The Field Office (Claudia Taitague) reached out yesterday to confirm that currently we are not returning anyone back.

HQ sent an inquiry and they wanted to confirm again :). Below is the note I sent Claudia with the attachment.

Carlos Silva

Port Director
OFO Chaplain
Customs & Border Protection
Tecate Port of Entry
Tecate, California

From: SILVA, CARLOS NMI
Sent: Tuesday, May 16, 2017 4:21 PM
To: TAITAGUE, CLAUDIA [REDACTED]
Subject: CF Applicants

Hello Claudia,

SCBPO McCarthy asked me to give you a call regarding our processing of Credible Fear applicants, I left you a voice mail and thought I would follow up with attached instructions that our Supervisors have been given.

Although I must say that we get very few CF applicants here due to the fact that the local government officials in Tecate, Mexico discourages non-locals coming to their city.

- Our guidance to our supervisors is that we do not return anybody that expresses fear in returning back to Mexico, we will process them and transport them to San Ysidro.
- Having said that, I did get briefed, (can't recall the date but it has been some time ago) that we had an occurrence where a traveler was advised to return to Tijuana as he had already been given a placement number there, (only one occurrence that I know of).
- About 3 years ago, we had an influx of people from Michoacan all carrying the same letter from a city representative indicating that there was a high crime rate in that city. At that time we referred them to the U.S. Consulate so that they could apply for a visa as they were not claiming Political Asylum or Credible Fear.

Hope this helps, I am leaving the office now but can be reached via cell phone if you should

need additional information. [REDACTED]

Thank you,

Carlos Silva

**Port Director
OFO Chaplain
Customs & Border Protection
Tecate Port of Entry
Tecate, California**
[REDACTED]

BLANK PAGE

From: ROMERO, JUAN J
To: BERGADO, RONALDO P; BINUYA, JEFFREY L; CONTE, MICHAEL D; GARCIA, ANTONIO A; MCCARTHY, NOELLE C; NORED, SEAN S; SKINNER, AUSTIN G; SPENCER, ROBERT F
Subject: Asylum/Credible Fear
Date: Saturday, August 26, 2017 1:55:55 AM

To all,

Today one of our officers decided to take it upon himself to send a Guatemalan family seeking credible fear to the San Ysidro port of entry to be processed. The family did what it was told and reported to San Ysidro. During the interview process they told the SYS officers they were sent there by an officer from the Tecate Port of Entry. As you can imagine that did not go over well with their management. I would like to remind you all that we do not send any credible fear or asylum cases to another port for processing. I find it concerning that an officer feels he can make this kind of decision without consulting a supervisor. We need to remind officers to consult supervisors prior to making decisions that can have a negative impact on the port. I suggest you establish a good line of communication with your team and tell them what you expect them to notify you of. Port Director Silva will be sending out an email to the troops addressing this issue.

Thank you,

Juan Romero
Asst. Port Director
Tecate Port of Entry
Office of Field Operations



BLANK PAGE

From: ROMERO, JUAN J
To: SILVA, CARLOS NMI
Subject: RE: Supreme Court Allows Full Implementation of Presidential Proclamation
Date: Friday, December 22, 2017 2:50:26 PM

Sir,

DP

JRO

From: SILVA, CARLOS NMI
Sent: Friday, December 22, 2017 11:43 AM
To: ROMERO, JUAN J [REDACTED]
Subject: RE: Supreme Court Allows Full Implementation of Presidential Proclamation

Looks like they are not subject to the executive order then.

Will SYS still take them since they are not Somalis?

It will not be a big issue then if in the future we allow them to withdrawal their application and have them go to San Ysidro on their own.

Eritrea is not a country in the Executive Order.

Thank you,
Carlos Silva

From: ROMERO, JUAN J
Sent: Friday, December 22, 2017 11:15:35 AM
To: SILVA, CARLOS NMI
Subject: RE: Supreme Court Allows Full Implementation of Presidential Proclamation

FYI- The subjects are form ERITREA

From: SILVA, CARLOS NMI
Sent: Friday, December 22, 2017 11:15 AM
To: MARICICH, ANNE L [REDACTED]; FLORES, PETE ROMERO
[REDACTED]
Cc: ARMIJO, JOHNNY L [REDACTED] RIVERA, CARLOS GERMAN
[REDACTED] ROMERO, JUAN J [REDACTED]
AKI, SIDNEY K [REDACTED]
Subject: RE: Supreme Court Allows Full Implementation of Presidential Proclamation

Anne,

We have been advised by WC Marin that San Ysidro is able to accommodate these ten

Somali's. Due to lack of resources at Tecate we will in turn be turning them over to AEU after personal searches and logging them in.

Our hope is that this occurrence is isolated and they don't start using us as a stepping stone to get to San Ysidro and not having to wait in the longer line at that location. DP

DP

I have asked APD Carlos Rivera to ensure Field Office Bullets are prepared for our role.

Thank you,

Carlos Silva

**Port Director
OFO Chaplain
Customs & Border Protection
Tecate Port of Entry
Tecate, California**

[REDACTED]

From: MARICICH, ANNE L

Sent: Friday, December 22, 2017 10:41 AM

To: SILVA, CARLOS NMI [REDACTED]; FLORES, PETE ROMERO
[REDACTED]

Cc: ARMIJO, JOHNNY L [REDACTED] RIVERA, CARLOS GERMAN
[REDACTED] ROMERO, JUAN J [REDACTED]

AKI, SIDNEY K [REDACTED]

Subject: RE: Supreme Court Allows Full Implementation of Presidential Proclamation

Thanks Carlos.

Anne Maricich
Deputy Director Field Operations
San Diego Field Office

[REDACTED]

From: SILVA, CARLOS NMI

Sent: Friday, December 22, 2017 10:38 AM

To: MARICICH, ANNE L [REDACTED] FLORES, PETE ROMERO
[REDACTED]

Cc: ARMIJO, JOHNNY L [REDACTED] RIVERA, CARLOS GERMAN
[REDACTED] ROMERO, JUAN J [REDACTED]

AKI, SIDNEY K [REDACTED]

Subject: FW: Supreme Court Allows Full Implementation of Presidential Proclamation

Anne / Pete,

We have ten Somali nationals that are applying for entry (Political Asylum) at the Port of Tecate. This is the first time we get them at our door step. We are coordinating with San Ysidro the processing of them as we will have to transport them there.

Bullets and more info will follow once we coordinate with AEU at San Ysidro.

Thank you,

Carlos Silva

**Port Director
OFO Chaplain
Customs & Border Protection
Tecate Port of Entry
Tecate, California**

From: MARICICH, ANNE L

Sent: Thursday, December 07, 2017 5:19 PM

To: SARRASIN, DAVID A <>; SALAZAR, DAVID A

<>; SILVA, CARLOS NMI <>

HERNANDEZ, ROSA E <>; AKI, SIDNEY K

<>; SNYDER, WILLIAM P <>

Cc: FLORES, PETE ROMERO <>; ARMIJO, JOHNNY L

Subject: FW: Supreme Court Allows Full Implementation of Presidential Proclamation

Port Directors,

The Supreme Court has issued Orders which permits the Presidential Proclamation of Enhanced Vetting to go into full effect for certain nationals of **Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela and Yemen** on **December 8, 2017**. This guidance supersedes all previously issued guidance on this Proclamation. This should have a limited operational impact at ports of entry as The Department of State will, in most cases, issue a waiver as appropriate.

This updated guidance is contained in the attached muster, which should be disseminated immediately. If you encounter a waiver request related to the travel restrictions Proclamation, please contact DFO Flores, ADFO Armijo or myself.

Thank you,

Anne Maricich
Deputy Director Field Operations
San Diego Field Office



1 MAYER BROWN LLP
Matthew H. Marmolejo (CA Bar No. 242964)
2 *mmarmolejo@mayerbrown.com*
350 S. Grand Avenue
3 25th Floor
Los Angeles, CA 90071-1503
4 Ori Lev (DC Bar No. 452565)
(*pro hac vice*)
5 *olev@mayerbrown.com*
Stephen M. Medlock (VA Bar No. 78819)
6 (*pro hac vice*)
smedlock@mayerbrown.com
7 1999 K Street, N.W.
Washington, D.C. 20006
8 Telephone: +1.202.263.3000
Facsimile: +1.202.263.3300
9

SOUTHERN POVERTY LAW CENTER
10 Melissa Crow (DC Bar No. 453487)
(*pro hac vice*)
11 *melissa.crow@splcenter.org*
1101 17th Street, N.W., Suite 705
12 Washington, D.C. 20036
Telephone: +1.202.355.4471
13 Facsimile: +1.404.221.5857

14 *Additional counsel listed on next page*
15 *Attorneys for Plaintiffs*

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 Al Otro Lado, Inc., *et al.*,

19 Plaintiffs,

20 v.

21 Chad F. Wolf,¹ *et al.*,

22 Defendants.
23
24
25
26
27
28

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 38 IN SUPPORT OF
PLAINTIFFS' REPLY IN SUPPORT
OF THEIR MOTION FOR
SUMMARY JUDGMENT**

FILED UNDER SEAL VERSION

¹ Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

1 CENTER FOR CONSTITUTIONAL RIGHTS

2 Baher Azmy (NY Bar No. 2860740) (*pro hac vice*)

3 *bazmy@ccrjustice.org*

4 Ghita Schwarz (NY Bar No. 3030087) (*pro hac vice*)

5 *gschwarz@ccrjustice.org*

6 Angelo Guisado (NY Bar No. 5182688) (*pro hac vice*)

7 *aguisado@ccrjustice.org*

8 666 Broadway, 7th Floor

9 New York, NY 10012

10 Telephone: +1.212.614.6464

11 Facsimile: +1.212.614.6499

12 SOUTHERN POVERTY LAW CENTER

13 Sarah Rich (GA Bar No. 281985) (*pro hac vice*)

14 *sarah.rich@splcenter.org*

15 Rebecca Cassler (MN Bar No. 0398309) (*pro hac vice*)

16 *rebecca.cassler@splcenter.org*

17 150 E. Ponce de Leon Ave., Suite 340

18 Decatur, GA 30030

19 Telephone: +1.404.521.6700

20 Facsimile: +1.404.221.5857

21 AMERICAN IMMIGRATION COUNCIL

22 Karolina Walters (DC Bar No. 1049113) (*pro hac vice*)

23 *kwalters@immcouncil.org*

24 1331 G St. NW, Suite 200

25 Washington, D.C. 20005

26 Telephone: +1.202.507.7523

27 Facsimile: +1.202.742.5619

28

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Al Otro Lado, Inc., *et al.*,

Plaintiffs,

v.

Chad Wolf, *et al.*,

Defendants.

Case No.: 17-cv-02366-BAS-KSC

MERITS EXPERT REPORT OF STEPHANIE LEUTERT

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

I. Introduction and Qualifications

1. My name is Stephanie Leutert. I am the Director of the Central America and Mexico Policy Initiative (“CAMPI”) at the Strauss Center for International Security and Law at the University of Texas at Austin. In this role, I lead the development and programming for CAMPI and conduct original research on the U.S.-Mexico border and Central American migration.

2. I previously submitted declarations in connection with the Plaintiffs’ September 26, 2019 motions for provisional class certification and preliminary injunction.¹ I also submitted an expert report on December 10, 2019 in support of the Plaintiffs’ motion for class certification and testified at a deposition in this case on January 28, 2020. My testimony and opinions in this report are consistent with my prior class certification expert report and deposition testimony but are informed by the full discovery record.

3. I am an expert on the practices of U.S. Customs and Border Protection (“CBP”) officers and supervisors, in particular, those assigned to the Office of Field Operations (“OFO”), with respect to asylum seekers who are in the process of arriving at ports of entry (“POEs”) on the U.S.-Mexico border from January 1, 2016 to the present. I am the lead author of the first-ever border-wide report on CBP’s metering policy and the related asylum waitlists in Mexican border cities. I have also

¹ Electronic Case Filing 293-8, 294-5.

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

led the publication of seven subsequent metering updates that document CBP’s practices and the conditions faced by asylum seekers waiting in Mexican border cities.

4. In addition to this work, I have taught a graduate-level course on Central American migration and Mexico’s migration policy at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin.

5. Through my work at CAMPI, I have directly observed CBP’s implementation of its turn-back policy at ports of entry on the U.S.-Mexico border.² Since October 2018, I have personally conducted fieldwork in eight Mexican border cities³ where asylum seekers affected by CBP’s metering policy are forced to wait. In these cities, I have spoken directly with affected asylum seekers, along with migrant shelter staff, members of civil society organizations, and Mexican federal and local government officials. I have also interviewed affected asylum seekers who

² I understand that Plaintiffs allege that, beginning in 2016, the Defendants, CBP, and the U.S. Department of Homeland Security (“DHS”) implemented a practice and then policy of turning back asylum seekers who were in the process of arriving in the United States at ports of entry. Plaintiffs allege that, between 2016 and 2018, this turn-back policy was formalized and implemented at ports of entry across the U.S.-Mexico border. (Second Amended Complaint). I understand that metering or queue management is a part of this turn-back policy. For ease of reference, in this report I use the terms “turn-back,” “metering,” and “queue management” interchangeably.

³ Those cities are Matamoros, Tamaulipas (Brownsville, Texas); Nuevo Progreso, Tamaulipas (Progreso, Texas); Reynosa, Tamaulipas (Hidalgo, Texas); Ciudad Miguel Alemán, Tamaulipas (Roma, Texas); Nuevo Laredo, Tamaulipas (Laredo, Texas); Piedras Negras, Coahuila (Eagle Pass, Texas); Ciudad Acuña, Coahuila (Del Rio, Texas); and Nogales, Sonora (Nogales, Arizona).

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

were waiting on international bridges; affected asylum seekers who were living in encampments near the international bridges; and affected asylum seekers waiting in migrant shelters, hotels, and apartments. I have watched firsthand as asylum seekers arrived at ports of entry along the United States - Mexico international border and were turned back by CBP officers. I have seen copies of asylum waitlists in six Mexican border cities⁴ and have spoken to 13 individuals in charge of running these lists.⁵ I have also partnered with colleagues who conducted similar fieldwork in five additional Mexican border cities.⁶

6. A copy of my current curriculum vitae, which includes a list of all the publications that I have authored in the prior 10 years, is attached as **Exhibit A** to this report.

7. My typical consulting rate is \$300 an hour. I have elected to waive that fee in this case and will receive no compensation for my work in this litigation. I

⁴ Those cities are Matamoros, Tamaulipas (Brownsville, Texas); Nuevo Progreso, Tamaulipas (Progreso, Texas); Reynosa, Tamaulipas (Hidalgo, Texas); Piedras Negras, Coahuila (Eagle Pass, Texas); Ciudad Acuña, Coahuila (Del Rio, Texas); and Ciudad Juárez, Chihuahua (El Paso, Texas).

⁵ These list managers were in the cities of Matamoros (three different Mexican list managers), Tamaulipas (Brownsville, Texas); Nuevo Progreso, Tamaulipas (Progreso, Texas); Reynosa, Tamaulipas (Hidalgo, Texas); Ciudad Miguel Alemán, Tamaulipas (Roma, Texas); Nuevo Laredo, Tamaulipas (three list managers) (Laredo, Texas); Piedras Negras (two list managers), Coahuila (Eagle Pass, Texas); and Ciudad Acuña, Coahuila (two list managers: individuals and families) (Del Rio, Texas).

⁶ Those cities are Ciudad Juárez, Chihuahua (El Paso, Texas); Agua Prieta, Sonora (Douglas, Arizona); San Luís Rio Colorado, Sonora (San Luis, Arizona); Mexicali, Baja California (Calexico, California); and Tijuana, Baja California (San Diego, California).

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

have chosen to waive any compensation given that Plaintiffs are a 501(c)(3) non-profit organization and Plaintiff’s counsel are providing their legal services pro bono.

8. I understand from Plaintiffs’ counsel that I have been retained to offer opinions on issues related to the merits phase of this litigation. This report contains a complete statement of my opinions and the reasons for them. It also contains all of the exhibits that will be used to summarize or support those opinions.

9. I understand that some discovery may occur, or that discovery responses may be supplemented, after this expert report is disclosed to Defendants’ counsel. I reserve the right to amend and revise this report and the exhibits to it if I should be made aware of additional information relevant to my opinions. I also understand that the Defendants in this case may retain an expert to rebut my opinions. I understand that I may have an opportunity to rebut the opinions offered by the Defendants’ expert. I reserve the right to do so.⁷

II. Materials Considered

10. In arriving at the opinions expressed in this expert report, I considered a wide range of facts and data that were made available by the Defendants in discovery and facts and data in the public domain. Below is a summary of the facts

⁷ This is the only case in which I have testified in the previous four years as an expert at trial or by deposition.

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

86. The metering and prioritization-based queue management policies remain in effect to this day.¹³⁸

E. CBP’s Current Metering Policy Implementation

87. With metering in place, asylum seekers arriving at the U.S.-Mexico border now face the following dynamic. When a pedestrian approaches the U.S.-Mexico dividing line, CBP officers stand at the “control stations” on the international line or right behind it and ask for the individual’s migration paperwork. If the pedestrian does not have a U.S. passport or a visa to enter the United States, CBP officers physically block their passage into U.S. territory by standing in the center of the pedestrian walkway. Most if not all of these blocked individuals are asylum seekers.

88. CBP officers then tell these arriving asylum seekers¹³⁹ that there is no capacity at the port of entry and the asylum seekers cannot currently be processed, which is also the explanation laid out in the April 2018 “Metering Guidance.” At times, these stationed CBP officers may also instruct the arriving asylum seekers to contact officials on the Mexican side of the border, to go to local Mexican shelters, or to first get on an asylum waitlist.

¹³⁸ CBPALOTRO000303-08; CBPALOTRO000314-15.

¹³⁹ The CBP officers know that the person is an asylum seeker based on their lack of appropriate migratory documents or if they preemptively announce that they would like to seek asylum to the CBP officers stationed at the limit line.

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

89. However, there is a caveat to this explanation. Even when CBP officers are stationed at control points near the international boundary, they may be several feet away from the border. This means that CBP officers still turn asylum seekers back to Mexico after they have already entered U.S. territory.¹⁴⁰ According to CBP’s response to Plaintiff’s Fourth Set of Interrogatories, only one out of the 14 surveyed ports of entry has its limit line located at the exact U.S.-Mexico international boundary.

Table 4: Distance Between the Limit Line and the International Boundary (April 2020)¹⁴¹

Port of Entry	Entrance / Bridge	Distance from the International Boundary
San Ysidro	Pedestrian East (PedEast)	
San Ysidro	Pedestrian West (PedWest)	
Otay Mesa		
Calexico	Calexico West	
Nogales	DeConcini	
Nogales	Morley Gate	
Nogales	Mariposa	
El Paso	Paso Del Norte	
El Paso	Yslete	
El Paso	Bridge of the Americas	
Laredo	Gateway to the Americas	
Hidalgo	Hidalgo International	
Brownsville	Gateway International	
Brownsville	Brownsville & Matamoros (B&M)	

90. For example, the San Ysidro limit line position is currently

¹⁴⁰ Ibid.

¹⁴¹ Plaintiff’s Fourth Set of Interrogatories, April 2020.

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

away from the border, the Nogales limit line position is [REDACTED] away from the border, the El Paso limit line positions are [REDACTED] from the border, and the Brownsville limit line position is [REDACTED] away from the border. Additionally, CBP Officer [REDACTED] deposition also outlines that asylum seekers crossed the border on to U.S. soil in Tecate “in most cases” before interacting with him at a queue management point.¹⁴² Despite having stepped into U.S. territory, asylum seekers at these ports of entry are still turned back to Mexico.

91. After being turned away from the U.S. port of entry, asylum seekers must figure out where to stay in the Mexican border city and how to get in line to ask for asylum in the United States. In the weeks and months after the “Metering Guidance” memo, asylum seekers generally held their place in line by waiting in physical lines on international bridges or outside the ports of entry. These initial lines were reported on the bridges outside ports of entry in Brownsville,¹⁴³ Hidalgo,¹⁴⁴

¹⁴² [REDACTED], Deposition, November 21, 2019.

¹⁴³ Aurora Orozco, “Familias de inmigrantes esperan bajo inclmencias en puentes internacionales,” *El Nuevo Herald*, June 19, 2018,

http://www.elnuevoheraldo.com/el_valle/noticias_locales/familias-de-inmigrantes-esperan-bajo-inclemencias-en-puentes-internacionales/article_69abbd70-73dc-11e8-aa87-4b8d72916648.html.

¹⁴⁴ Sandra Tovar, “‘Toman’ migrantes Puente en busca de asilo en EU,” *El Mañana*, May 22, 2018, <https://www.elmanana.com/toman-migrantes-puente-busca-asilo-eu-puente-internacional-migrantes-asilo-politico/4415659>.

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

Roma,¹⁴⁵ Laredo,¹⁴⁶ Eagle Pass,¹⁴⁷ Nogales,¹⁴⁸ El Paso,¹⁴⁹ and San Diego.¹⁵⁰ In the following months, due to local residents’ concerns, hygiene issues, inclement weather, or disputes regarding fairness, Mexican officials, non-governmental organizations, or asylum seekers themselves began waitlists to allow people to hold their place in line with their name instead of physical presence. These asylum waitlists have no standardized procedure or structure. They remain in every city with waiting asylum seekers, and may be managed by the asylum seekers themselves, Mexican government officials, or humanitarian workers.

Table 5: Groups that Run the Asylum Waitlist (May 2020)¹⁵¹

List Managers	Number of Lists	Lists by City
Non-governmental	9	Nuevo Laredo (6), Reynosa, Agua

¹⁴⁵ Silvia Foster-Frau, “Asylum seekers denied legal entry into U.S. are camping out on bridges,” *San Antonio Express News*, June 6, 2018, <https://www.expressnews.com/news/local/article/Asylum-seekers-denied-legal-entry-into-U-S-are-12973965.php>.

¹⁴⁶ Meredith Hoffman, “The Horrible Conditions Endured by Migrants Hoping to Enter the US Legally,” *Vice News*, July 3, 2018, https://www.vice.com/en_us/article/59qny3/migrants-hoping-to-get-us-asylum-forced-to-wait-on-bridge.

¹⁴⁷ “Incomoda a automovilistas y peatones presencia de migrantes en puentes internacionales de Piedras Negras,” *La Rancherita del Aire*, July 26, 2018, <https://www.rancherita.com.mx/noticias/detalles/53790/incomoda-a-automovilistas-y-peatones-presencia-de-migrantes-en-puentes-internacionales-de-piedras-negras.html#.XcjjtudKjGJ>.

¹⁴⁸ Simon Romero & Miriam Jordan, “On the Border, a Discouraging New Message for Asylum Seekers: Wait,” *New York Times*, June 12, 2018, <https://www.nytimes.com/2018/06/12/us/asylum-seekers-mexico-border.html>.

¹⁴⁹ Silvia Foster-Frau, “Asylum seekers denied legal entry into U.S. are camping out on bridges,” *San Antonio Express-News*, June 6, 2018, <https://www.expressnews.com/news/local/article/Asylum-seekers-denied-legal-entry-into-U-S-are-12973965.php#photo-15680354>.

¹⁵⁰ “Asylum seekers wait days and weeks at U.S.-Mexico border,” *Associated Press*, June 7, 2018, <https://www.cbsnews.com/news/asylum-seekers-wait-days-and-weeks-at-u-s-mexico-border/>.

¹⁵¹ Cities may be listed in multiple categories if the city contains multiple waitlists.

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

organization		Prieta, San Luis Río Colorado
Grupo Beta	2	Tijuana, Mexicali
Asylum Seekers	1	Matamoros
National Migration Institute	1	Matamoros
Civil Protection	1	Ciudad Acuña
State Population Agency	1	Ciudad Juárez
Municipal Government	1	Piedras Negras, Nogales

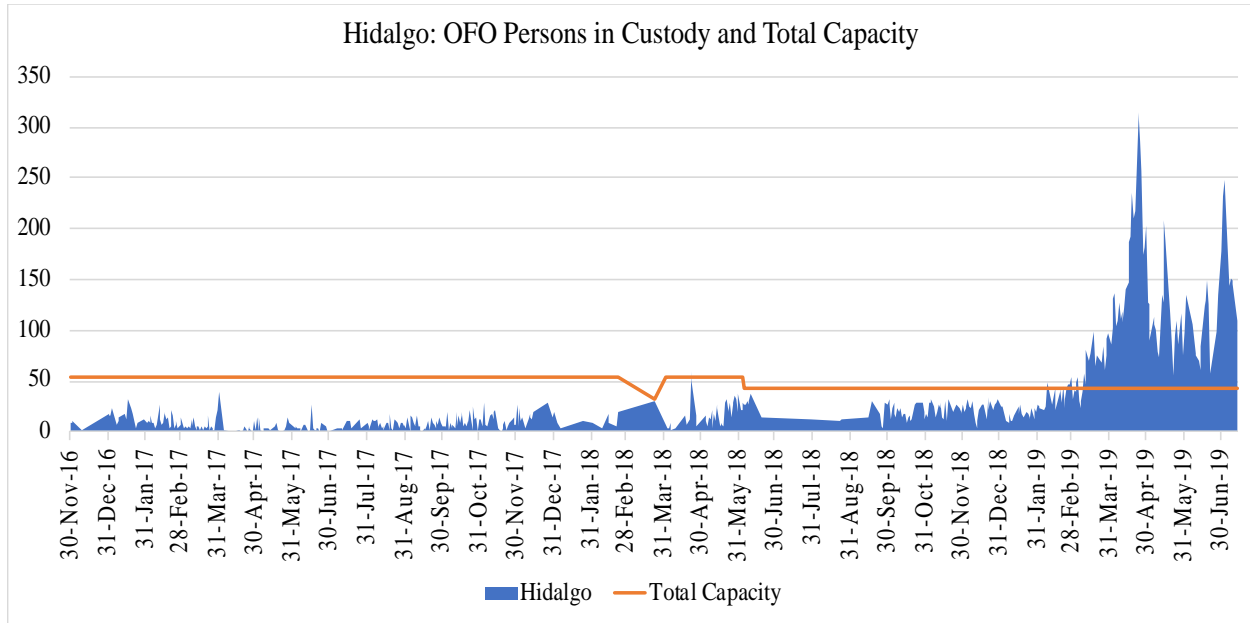
92. Similarly, there is no standardized Mexican or U.S. regulation of the asylum waitlists nor their managers.¹⁵² There are also no controls to guarantee that these waitlists are being run transparently or without corruption. Due to this lack of oversight, asylum seekers and civil society organizations have alleged that some list managers have charged asylum seekers to get on the asylum waitlist, including in Piedras Negras¹⁵³ (Eagle Pass), Reynosa¹⁵⁴ (Hidalgo), and Matamoros¹⁵⁵ (Brownsville). This has made seeking asylum at a U.S. port of entry at times dependent on whether asylum seekers and their loved ones could pay hundreds or

¹⁵² Despite Mexican government entities managing the lists in certain cities, there does not appear to be any standardized guidance. This is evidenced by the different list formats and processes in different cities even when the same federal government agency is running the asylum waitlist.

¹⁵³ “Metering Update,” Strauss Center for International Security and Law and the Center for U.S.-Mexican Studies, November 2019, https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf.

¹⁵⁴ Emily Green, “Mexican officials are extorting thousands of dollars from migrants applying for asylum,” *Vice News*, May 13, 2019, https://www.vice.com/en_us/article/kzdy4e/exclusive-mexican-officials-are-extorting-thousands-of-dollars-from-migrants-to-apply-for-asylum; Carolina Garza, “Cubanos denuncian a INM de corrupción en trámite de asilo humanitario,” *Milenio*, June 5, 2019, <https://www.milenio.com/politica/cubanos-denuncian-inm-corrupcion-tramite-asilo-humanitario>.

¹⁵⁵ Molly Hennessy-Fiske, “Asylum seeker blocked at Texas border bridges say Mexican officials are demanding money to let them pass,” *Los Angeles Times*, November 22, 2018, <https://www.latimes.com/nation/la-fg-asylum-list-border-2018-story.html>.

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

108. Table 7 shows the capacity levels at each port of entry, using Queue Management Reports from June 2018 to July 2019. (MCAT data from 2016 through 2019 is in the Appendix).

Table 7: Field Queue Management Reports (2018-2019)

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

Field Office	Port of Entry	Days with Data	0-50% Capacity	51-100% Capacity	>100% Capacity
Laredo	Brownsville	362	87%	13%	0%
	Progreso	362	93%	6%	1%
	Hidalgo	362	46%	27%	27%
	Rio Grande	362	97%	3%	0%
	Roma	362	88%	12%	0%
	Laredo	362	90%	10%	0%
	Eagle Pass	362	8%	49%	43%
	Del Rio	362	84%	16%	0%
El Paso	Port of El Paso	314	5%	59%	36%
	Santa Teresa	314	71%	23%	6%
	Columbus	314	96%	4%	1%
	Tornillo	314	98%	2%	0%
	Presidia	314	92%	6%	1%
Tucson	Douglas	252	65%	17%	18%
	Lukerville	252	81%	10%	9%
	Naco	252	93%	3%	4%
	Nogales	252	27%	61%	12%
	San Luis	253	59%	40%	1%
San Diego	San Ysidro	258	5%	89%	6%
	Otay Mesa	258	100%	0%	0%
	Tecate	258	100%	0%	0%
	Calexico West	258	29%	70%	1%
	Calexico East	257	100%	0%	0%
	Andrade	257	100%	0%	0%

Total percent may not equal 100% due to rounding.

109. This finding is consistent with CBP’s own evaluation of its Queue Management data from June 2018 through November 2018. In this evaluation, CBP followed a similar methodology to the one that was used to create this expert report: CBP extracted its Queue Management Reports from emails within senior CBP

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

personnel’s official email accounts and entered the data into an Excel spreadsheet.¹⁹⁰

Using this methodology, CBP’s first conclusion was also that there exists a large deviation among the ports of entry, writing that “some ports are never close to capacity but still have aliens waiting and a few other ports (Eagle Pass, El Paso, and Santa Teresa¹⁹¹) routinely exceed capacity.”¹⁹²

110. The Queue Management Reports also include the number of people waiting at the “limit line,” which is at or near the international boundary. This number serves to show that CBP was aware that asylum seekers were waiting in Mexican border cities.¹⁹³ However, despite this recognition, multiple ports of entry continued to operate with capacity levels at or below 50 percent. For example, in the 362 Queue Management Reports from June 18, 2018 through July 15, 2019 that provide data for the Laredo port of entry, 264 of them noted that CBP was aware that there was a line of asylum seekers waiting in Nuevo Laredo. However, in 234

¹⁹⁰ Similar to CBP, I calculated the port of entry capacity based on the stated percent at capacity of each port of entry and using MCAT’s reported capacity numbers. Also similar to CBP, I discovered multiple errors in CBP’s capacity percentages, which often stated 100 percent capacity despite reporting low numbers of individuals in custody. I did not attempt to fix these errors in my calculations. AOL-DEF-00210504.

¹⁹¹ In the reviewed data, CBP calculated that Santa Teresa’s average capacity was 48 percent for the period in question. Its data shows that Santa Teresa exceeded full capacity (defined as greater than 100 percent) in 10 out of the 95 days. This means that the Santa Teresa port of entry exceeded its capacity 10.5 percent of the time. By comparison, the Eagle Pass port of entry exceeded capacity 42.1 percent of the time and the El Paso port of entry exceeded capacity 22 percent of the time.

¹⁹² AOL-DEF-00210504.

¹⁹³ On May 3, 2019, CBP in the Laredo Field Office was asked to record the total number of individuals waiting in Mexico beyond those physically on the bridge.

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

of those days (89 percent), the Laredo port of entry both reported that it had a line of asylum seekers waiting to enter the United States and that its utilized port capacity was at or below 50 percent. Table 8 contains the information for each port of entry. (Table 13 in the Appendix contains the percent of days at each port of entry where there was a reported line and the port capacity was at or below 75 percent).

Table 8: Days with Reported Queues at the Limit Line and Port of Entry Capacity Levels Below 50 Percent

City	# of Days with Data	# of Days with Reported Line	# of Days with Reported Line & Port Capacity at or Below 50%	Percent of Days with Reported Line Where Port Capacity at or Below 50%
Laredo	362	264	234	89%
Rio Grande	361	19	17	89%
Progreso	362	117	100	85%
Brownsville	362	284	240	85%
Roma	362	111	76	68%
Del Rio	362	104	60	58%
Nogales	253	86	30	35%
Douglas	253	13	4	31%
Eagle Pass	361	161	14	9%
Hidalgo	362	131	12	9%
El Paso	304	145	8	6%

111. The third finding is that despite uniformly implementing turn-backs and metering, no port of entry appears to have put in place a contingency plan for addressing mass migration nor implemented any suggestions that could have led to

1 MAYER BROWN LLP
Matthew H. Marmolejo (CA Bar No. 242964)
2 *mmarmolejo@mayerbrown.com*
350 S. Grand Avenue
3 25th Floor
Los Angeles, CA 90071-1503
4 Ori Lev (DC Bar No. 452565)
(*pro hac vice*)
5 *olev@mayerbrown.com*
Stephen M. Medlock (VA Bar No. 78819)
6 (*pro hac vice*)
smedlock@mayerbrown.com
7 1999 K Street, N.W.
Washington, D.C. 20006
8 Telephone: +1.202.263.3000
Facsimile: +1.202.263.3300
9

SOUTHERN POVERTY LAW CENTER
10 Melissa Crow (DC Bar No. 453487)
(*pro hac vice*)
11 *melissa.crow@splcenter.org*
1101 17th Street, N.W., Suite 705
12 Washington, D.C. 20036
Telephone: +1.202.355.4471
13 Facsimile: +1.404.221.5857

14 *Additional counsel listed on next page*
15 *Attorneys for Plaintiffs*

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 Al Otro Lado, Inc., *et al.*,

19 Plaintiffs,

20 v.

21 Chad F. Wolf,¹ *et al.*,

22 Defendants.
23
24

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 3 IN SUPPORT OF
PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF THEIR MOTION
FOR SUMMARY JUDGMENT**

FILED UNDER SEAL

25
26
27
28 ¹ Acting Secretary Wolf is automatically substituted for former Acting Secretary
McAleenan pursuant to Fed. R. Civ. P. 25(d).

1 CENTER FOR CONSTITUTIONAL RIGHTS

2 Baher Azmy (NY Bar No. 2860740) (*pro hac vice*)

3 *bazmy@ccrjustice.org*

4 Ghita Schwarz (NY Bar No. 3030087) (*pro hac vice*)

5 *gschwarz@ccrjustice.org*

6 Angelo Guisado (NY Bar No. 5182688) (*pro hac vice*)

7 *aguisado@ccrjustice.org*

8 666 Broadway, 7th Floor

9 New York, NY 10012

10 Telephone: +1.212.614.6464

11 Facsimile: +1.212.614.6499

12 SOUTHERN POVERTY LAW CENTER

13 Sarah Rich (GA Bar No. 281985) (*pro hac vice*)

14 *sarah.rich@splcenter.org*

15 Rebecca Cassler (MN Bar No. 0398309) (*pro hac vice*)

16 *rebecca.cassler@splcenter.org*

17 150 E. Ponce de Leon Ave., Suite 340

18 Decatur, GA 30030

19 Telephone: +1.404.521.6700

20 Facsimile: +1.404.221.5857

21 AMERICAN IMMIGRATION COUNCIL

22 Karolina Walters (DC Bar No. 1049113) (*pro hac vice*)

23 *kwalters@immcouncil.org*

24 1331 G St. NW, Suite 200

25 Washington, D.C. 20005

26 Telephone: +1.202.507.7523

27 Facsimile: +1.202.742.5619

28

19

20

21

22

23

24

25

26

27

28

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AL OTRO LADO, INC., ET)
AL.,)
)
Plaintiffs,)
) CIVIL ACTION
VS.)
) NO.: 17-cv-02366-BAS-KSC
KEVIN K. MCALEENAN, ET)
AL.,)
)
Defendants.)

ORAL AND VIDEOTAPED CONFIDENTIAL
DEPOSITION OF
DAVID ATKINSON
JUNE 12, 2020
TAKEN VIA REMOTE VIDEOCONFERENCE

ORAL AND VIDEOTAPED DEPOSITION OF DAVID ATKINSON,
produced as a witness at the instance of the Plaintiffs,
and duly sworn, was taken in the above-styled and
numbered cause on June 12, 2020, from 9:32 a.m. to 3:19
p.m., before Annette Peltier, CSR, Texas Certified
Realtime Reporter, in and for the State of Texas,
reported by machine shorthand from Houston, Texas,
pursuant to the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.



A P P E A R A N C E S

FOR THE PLAINTIFFS:

(Appearing via Videoconference)

MR. STEPHEN M. MEDLOCK

MR. ORI LEV

Mayer Brown

1999 K Street, N.W.

Washington, D.C. 20006

Phone: 202.263.3221

E-Mail: Smedlock@mayerbrown.com

FOR THE DEFENDANTS:

(Appearing via Videoconference)

MR. ALEXANDER HALASKA

MS. KATHERINE J. SHINNERS

U.S. Department of Justice

Office of Immigration Litigation

Ben Franklin Square, P.O. Box 868

Washington, D.C. 20044

Phone: 202.598.8259

E-Mail: Alexander.j.halaska@usdoj.gov

Katherine.j.shinners@usdoj.gov

- and -

MR. BENJAMIN WOLARSKY, CBP In-House Counsel

FOR THE WITNESS:

(Appearing via Videoconference)

MR. DENIS DOWNEY

Attorney at Law

1185 Ruben Torres Sr. Blvd., Suite 3

Brownsville, Texas 78521-1743

Phone: 956.555.1234

1

ALSO PRESENT:

2

(Appearing via Videoconference)

3

Solange Tran, Videographer

4

Kevin Cranford, Exhibit Tech

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1	Index		
2			Page
3			
4	Appearances.....		2
5	Examination by Mr. Medlock.....		6
6	Examination by Mr. Halaska.....		166
7	Adjournment.....		180
8	Court Reporter's Certificate.....		182
9	Exhibits		
10	Number	Description	Page
11	Exhibit 288	March 30, 2017 E-Mail From Walter Dressler to William T. Haralson, Concerning an incident On December 6, 2016, Et al (NTEU 000136-137).....	73
12			
13	Exhibit 289	December 23, 2016 E-Mail from Jessica Ibarra To William T. Haralson, Concerning the incident On December 6, 2016 (NTEU 000138).....	79
14			
15	Exhibit 290	December 27, 2016 E-Mail from Eric Clough To David Atkinson, concerning The incident on December 6, 2016 (NTEU 000139-40).....	84
16			
17	Exhibit 291	April 12, 2017, E-Mail From William T. Haralson To Walter Dressler, Pages 1-19 (NTEU 00141-159).....	91
18			
19			
20			
21			
22			
23			
24			
25			

1 MR. MEDLOCK: All right. Can we go
2 off the record?

3 THE VIDEOGRAPHER: The time is
4 10:53 a.m. We're going off the record.

5 (Break taken from 10:53 a.m. to
6 11:08 a.m.)

7 THE VIDEOGRAPHER: The time is
8 11:08 a.m. We're back on the record.

9 Q. (BY MR. MEDLOCK) Welcome back, Mr. Atkinson.

10 A. Welcome back.

11 Q. Prior to 2016, have you seen any searches or
12 spikes in the number of migrants coming to the Hidalgo
13 port of entry?

14 A. I would say yes.

15 Q. In the instances where there were surges or
16 spikes in the number of migrants coming to the Hidalgo
17 port of entry, was CBP or its predecessor organizations
18 able to handle those prior surges or spikes without
19 resorting to metering or turn-backs?

20 A. I would say that they had the capability of
21 doing it.

22 Q. Why would you say they had the capability of
23 processing the spike or surge in migrants without
24 turning back asylum seekers?

25 A. Oh, because we have a -- a -- you know, when --

1 when we were having a -- a -- difficulties in -- in
2 processing individuals the second -- the second surge,
3 we had a vast amount of -- of port of entries that had
4 areas that could have easily created standalone tents
5 and -- and detention areas that -- in order to handle
6 those -- those -- those processing and they weren't
7 done.

8 We proposed them. It just never -- never
9 came to be. They had the areas --

10 Q. So --

11 A. -- and the people to do it, but they didn't.

12 Q. So there were proposals --

13 A. Yes.

14 Q. -- to increase the capacity of the Hidalgo port
15 of entry, but management never acted on them; is that
16 right?

17 A. Yes.

18 MR. HALASKA: Objection, leading.

19 Q. (BY MR. MEDLOCK) You can answer, sir.

20 A. We -- we verbally proposed putting up tents in
21 parking lots and -- and controlled fence areas from
22 port of entries, and they didn't want to do it.

23 We came with solutions, and they felt what
24 they implemented was in the best interest of the
25 government at the time.

1 Q. When you say "they," who's "they"?

2 A. The port director at the time, David Gonzalez.

3 Q. So from your perspective, if the metering or
4 turn-back policy did not exist and CBP just processed
5 people in the order that they came to the -- to the
6 border at the port of entry, CBP would have the
7 resources to do that; is that right?

8 A. I would feel like they would.

9 MR. HALASKA: Objection, leading.

10 Go ahead.

11 THE WITNESS: Go ahead?

12 MR. HALASKA: Go ahead.

13 A. I felt they did have the resources because we
14 were doing it before.

15 Q. (BY MR. MEDLOCK) When you say "we were doing
16 it before," what do you mean by that?

17 A. Well, we were funneling out detainees at
18 different areas to different points of areas to ensure
19 they got processing. In other words, overtime
20 assignments -- there was assignments, there was TDYs,
21 there was -- they were using all the ports of entry.

22 I've actually had the opportunity to
23 represent several ports, not just the Port of Hidalgo.
24 I represent the ports from Roma port of entry all the
25 way to Harlingen port of entry that -- which includes

1 the airport, Progreso, Donna, Mission, Los Ebanos,
2 Rio Grande City, Roma, Falcon -- Falcon Heights port of
3 entry. So I have numerous ports of entries that --
4 that I represent.

5 Q. And thank you for that clarification.

6 For each of those ports of entry that you
7 represent, are they in the Laredo field office of CBP?

8 A. Yes.

9 Q. And based on your representation and
10 observations of those ports of entry in the Laredo
11 field office, do you believe that CBP could process
12 asylum seekers in the order that they came to the port
13 of entry without resorting to metering or turn-backs?

14 A. I would have to say they've done it before
15 under Obama. I couldn't see a reason why they couldn't
16 do it when it was Trump's administration.

17 Q. Okay. Sir, I'd like to move on to some
18 documents that will hopefully refresh your recollection
19 about some of the things you testified to before.

20 What we'll do is we'll put them on the
21 screen. Kevin, who is our exhibit tech, will
22 occasionally blow parts of them up so you can see them
23 better.

24 But at any point, if you're having trouble
25 looking at a document, just let myself or Kevin know

1 and we'll try to enlarge it and get it in a version
2 that you can see. But today -- today is about what you
3 know. It's not a vision test. Okay?

4 A. Okay. Thank you, sir.

5 Q. Okay.

6 MR. MEDLOCK: Kevin, can you please
7 bring up Tab 1, please?

8 Q. (BY MR. MEDLOCK) Okay, Mr. Atkinson. I've
9 put --

10 A. I -- I surely can't -- I surely can't see it.

11 Q. Okay. Thank you. We'll -- we'll make it
12 bigger.

13 A. I need at least three times as big.

14 Q. So I'm going to have just some general
15 questions about the exhibits, sir; and then I'll -- we
16 can --

17 A. Can -- can you make it bigger, please?

18 Q. Sure.

19 EXHIBIT TECH: We'll have to go one by
20 one per e-mail to make them each bigger one at a time.

21 MR. MEDLOCK: Okay.

22 THE WITNESS: Okay. I can't -- it's
23 still -- it's still blurry. I mean, I can't see it.

24 MR. MEDLOCK: Can you see that, sir?

25 THE WITNESS: I see part of it.

1 A. It's just -- is -- is -- getting all these
2 documents together.

3 And, you know, if you figure -- figure this
4 out, you've got 2018, 2019, 2020. You know, we've
5 contacted the commissioner, the citizen commissioner,
6 the local management.

7 You know, now we need the -- the President
8 to see if he's going to do anything for us, you know;
9 and it's -- it's one of these things that -- you know,
10 at what point do -- do we exhaust our -- our
11 administrative remedy -- remedy until somebody gets --
12 until somebody dies out there.

13 We've already been hurt out there.
14 There's -- just about the whole reason for -- for --
15 for all these grievances. Nobody's out there to help
16 us.

17 Q. So -- and I -- I appreciate that.

18 I wanted to focus, if I could, with you on
19 some of the pictures that you attached to this e-mail.

20 A. Yes, sir.

21 MR. MEDLOCK: And let's start with the
22 picture on NTEU 113, please, Kevin.

23 Q. (BY MR. MEDLOCK) I'm sorry for the quality of
24 the photos, sir. I only have this one e-mail in black
25 and white.

1 A. Yes, sir.

2 Q. You write underneath this picture, quote:

3 Chairs reduced to minimize the amount of persons held
4 in the seating area, leaving a huge blank space.

5 Did I read that correctly?

6 A. Yes.

7 Q. Okay. And is -- is this the instance -- the
8 incident we were talking about earlier where chairs
9 were removed from a secondary inspection area?

10 A. Well -- well, like I said, it happened in --
11 in -- in different times. This was happening at one of
12 the worst times. You're saying -- there's different --

13 (Talking over each other.)

14 Q. (BY MR. MEDLOCK) -- multiple --

15 A. -- you have to tell them --

16 (Talking over each other.)

17 A. -- there's multiple times that -- this was the
18 worst -- worst time it happened.

19 Q. (BY MR. MEDLOCK) Okay. So there were multiple
20 incidents where CBP decided to remove chairs from the
21 secondary inspection area of the Port of Hidalgo; is
22 that right?

23 A. Yes.

24 Q. And you said initially you thought that
25 creating some space there was good for officer safety,

1 correct?

2 A. Correct, the -- at this time --

3 Q. And --

4 A. -- too many.

5 Q. Right.

6 So there -- so CBP is actually removing
7 more chairs than is necessary to ensure officer safety;
8 is that right?

9 MR. HALASKA: Objection, leading.

10 A. I don't understand.

11 Can you repeat?

12 Q. (BY MR. MEDLOCK) Oh, sure.

13 So you said there were different phases in
14 which CBP removed chairs from the secondary inspection
15 area at the Port of Hidalgo.

16 And you said that this picture shows the
17 worst time.

18 A. Yes, sir.

19 Q. In your opinion, has CBP removed more chairs
20 than is necessary for ensuring officer safety?

21 MR. HALASKA: Same objection.

22 A. I still don't understand your -- your -- your --
23 your question.

24 Q. (BY MR. MEDLOCK) Okay. Let me see if I can
25 say it a different way.

1 You write: (Reading) Chairs reduced to
2 minimize the amount of persons held in the seating
3 area.

4 What did you mean when you said it -- they
5 were reduced to minimize the amount of persons held in
6 the seating area?

7 A. Well, my understanding at the time, at that
8 time, at this particular time, if we can -- my -- my --
9 my memory a little bit -- is that -- is that they're
10 moving the metering point to somewhere else, and they
11 wanted to claim that there was less room to sit people,
12 so they -- they reduced the amount of chairs in order
13 to push the people back to the metering points.

14 Q. I see.

15 So CBP at this time intentionally removed
16 seats so that they could say that they couldn't process
17 as many people at the Port of Hidalgo; is that right?

18 A. Yes.

19 Q. Let's move to the next page, NTEU 114.

20 A. Uh-huh.

21 Q. And underneath this -- underneath this photo,
22 you write: (Reading) No officers stationed to process
23 work at 10 to 11 p.m. and only for employees to process
24 the family unit credible -- creditable fear cases.

25 Did I read that correctly?

1 A. Yes.

2 Q. And I think you meant "credible" fear cases; is
3 that right?

4 A. Yes.

5 Q. Okay. What is this picture showing?

6 A. Well, it shows that management isn't processing
7 the people from that time to that time. They were
8 shutting down the area for some reason.

9 Q. So --

10 A. When I talk --

11 Q. Go ahead.

12 A. Go ahead.

13 Q. Go ahead.

14 A. No, go ahead.

15 I think I spoke to David John, and this is
16 before -- whoo, when he was acting port director. And
17 he was stating at the time -- and I don't know if it
18 was this time of year or not.

19 He said that we had sent a total of 80
20 people to San Diego on TDY and we had all the services
21 open and we're processing all these people. And it
22 shows that we can do more with less.

23 So in order to ask for more money and to
24 show how it's interfering with the -- with the agency,
25 they started closing services.

1 Q. Hmm. So --

2 A. In reality --

3 Q. -- just so --

4 A. -- in reality they had the people -- go ahead.

5 Q. You said, "in reality they had the people."

6 Can you finish that sentence?

7 A. In reality, they had the people. All they
8 needed was the -- was the funding to have them there or
9 their realignment.

10 Q. So in reality, CBP had the resources to inspect
11 and process the asylum seekers that were coming to the
12 Port of Hidalgo; but it chose to remove seats from the
13 secondary inspection area and at times shut down the
14 secondary inspection area.

15 Do I understand that correctly?

16 A. They would shut down certain services, like the
17 one that is -- that is pictured.

18 When you brought that up to Mr. Owens at --
19 at the meeting -- and I think he made claim that the
20 southwest border was fully staffed.

21 Q. Do you think that statement was true?

22 A. Of course it's true. You can't deploy 80 people
23 from every border -- a large amount of people at every
24 port to California, you know, and say -- still run full
25 services when they were out there and then come back

1 and deploy less and say that you don't have enough
2 people.

3 You know, it's just the -- the money was --
4 was -- depending on their budgetary, what they felt
5 they had authorized at the time.

6 Q. Okay. So CBP, to your mind, made a decision to
7 prioritize things other than processing asylum seekers;
8 is that right?

9 MR. HALASKA: Objection, leading.

10 A. I -- I believed in -- in what I was told, that
11 they had to create some kind of disruption in the
12 service in order to get more money to handle the
13 situation because beforehand, when -- when they deployed
14 all the people, we had a hundred percent of everything
15 opened up; but they couldn't tell -- they couldn't show
16 Congress, they couldn't show anybody that they needed
17 more money if they didn't create some kind of suffrage
18 (phonetics) in -- in the orders.

19 Q. (BY MR. MEDLOCK) So they intentionally slowed
20 down work so that they could get more funding?

21 A. Yes.

22 Q. Okay. Let's move to the next page of
23 Exhibit 294. This was an attachment to your e-mail
24 that is a March 6th, 2019, letter from -- that was
25 signed by dozens of CBP officers.

1 MAYER BROWN LLP
2 Matthew H. Marmolejo (CA Bar No. 242964)
3 mmarmolejo@mayerbrown.com
4 350 S. Grand Avenue
5 25th Floor
6 Los Angeles, CA 90071-1503
7 Ori Lev (DC Bar No. 452565)
8 (pro hac vice)
9 olev@mayerbrown.com
10 Stephen M. Medlock (VA Bar No. 78819)
11 (pro hac vice)
12 smedlock@mayerbrown.com
13 1999 K Street, N.W.
14 Washington, D.C. 20006
15 Telephone: +1.202.263.3000
16 Facsimile: +1.202.263.3300

17 SOUTHERN POVERTY LAW CENTER
18 Melissa Crow (DC Bar No. 453487)
19 (pro hac vice)
20 melissa.crow@splcenter.org
21 1101 17th Street, N.W., Suite 705
22 Washington, D.C. 20036
23 Telephone: +1.202.355.4471
24 Facsimile: +1.404.221.5857

25 Additional counsel listed on next page
26 Attorneys for Plaintiffs

27 **UNITED STATES DISTRICT COURT**
28 **SOUTHERN DISTRICT OF CALIFORNIA**

1 Al Otro Lado, Inc., *et al.*,

2 Plaintiffs,

3 v.

4 Chad F. Wolf,¹ *et al.*,

5 Defendants.

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 4 IN SUPPORT OF
PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF THEIR MOTION
FOR SUMMARY JUDGMENT**

FILED UNDER SEAL

¹ Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

1 CENTER FOR CONSTITUTIONAL RIGHTS

2 Baher Azmy (NY Bar No. 2860740) (*pro hac vice*)

3 *bazmy@ccrjustice.org*

4 Ghita Schwarz (NY Bar No. 3030087) (*pro hac vice*)

5 *gschwarz@ccrjustice.org*

6 Angelo Guisado (NY Bar No. 5182688) (*pro hac vice*)

7 *aguisado@ccrjustice.org*

8 666 Broadway, 7th Floor

9 New York, NY 10012

10 Telephone: +1.212.614.6464

11 Facsimile: +1.212.614.6499

12 SOUTHERN POVERTY LAW CENTER

13 Sarah Rich (GA Bar No. 281985) (*pro hac vice*)

14 *sarah.rich@splcenter.org*

15 Rebecca Cassler (MN Bar No. 0398309) (*pro hac vice*)

16 *rebecca.cassler@splcenter.org*

17 150 E. Ponce de Leon Ave., Suite 340

18 Decatur, GA 30030

19 Telephone: +1.404.521.6700

20 Facsimile: +1.404.221.5857

21 AMERICAN IMMIGRATION COUNCIL

22 Karolina Walters (DC Bar No. 1049113) (*pro hac vice*)

23 *kwalters@immcouncil.org*

24 1331 G St. NW, Suite 200

25 Washington, D.C. 20005

26 Telephone: +1.202.507.7523

27 Facsimile: +1.202.742.5619

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

-----x

AL OTRO LADO, INC., et al., :

Plaintiff, :

-vs- : Case No.

KEVIN K. McALEENAN, et al., : 17-cv-02366-BAS-KSC

Defendants. :

-----x

CONFIDENTIAL

30(b)(6) Deposition of

U.S. CUSTOMS & BORDER PROTECTION

By and Through

RANDY J. HOWE

Washington, D.C.

Thursday, January 9, 2019

9:34 a.m.

Job No.: 541878

Pages 1 - 305

Reported by: Tammy S. Newton

Magna Legal Services
866-624-6221
www.MagnaLS.com



1

2 30(b)(6) Deposition of Randy J. Howe held at the
3 offices of:

4 Mayer Brown

5 1999 K Street, N.W.

6 Washington, D.C. 20006

7

8

9

10 Pursuant to agreement, before Tammy S. Newton, a
11 Notary Public in and for the District of
12 Columbia.

13

14

15

16

17

18

19

20

21

22

1 A P P E A R A N C E S

2 ON BEHALF OF PLAINTIFFS:

3 STEPHEN M. MEDLOCK, ESQUIRE

4 Mayer Brown

5 1999 K Street, N.W.

6 Washington, D.C. 20006

7 (202) 263-3221

8 smedlock@mayerbrown.com

9 and

10 ANGELO GUISADO, ESQUIRE

11 Center for Constitutional Rights

12 666 Broadway, 7th Floor

13 New York, New York 10012

14 (212) 614-6454

15 aguisado@ccrjustice.org

16

17

18

19

20

21

22

1 ON BEHALF OF DEFENDANTS:

2 KATHERINE J. SHINNERS, ESQUIRE

3 SUSAN IMERMAN, ESQUIRE

4 U.S. Department of Justice

5 Office of Immigration Litigation

6 Ben Franklin Square, P.O. Box 868

7 Washington, D.C. 20044

8 (202) 598-8259

9 katherine.j.shinners@usdoj.gov

10 and

11 SARAH RICH, ESQUIRE

12 REBECCA CASSLER, ESQUIRE

13 Southern Poverty Law Center

14 1101 17th Street, N.W.

15 Suite 705

16 Washington, D.C. 20036

17 (202) 355-4471

18 sarah.rich@splcenter.org

19 (Appeared via Telephone)

20

21

22

1 Also Present:

2 Louisa Slocum, Esquire, CBP

3 Kristine King, Esquire, CBP

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

1	C O N T E N T S	
2	EXAMINATION OF RANDY J. HOWE	PAGE:
3	By Mr. Medlock	9
4	By Mr. Guisado	257
5	By Ms. Shinnars	297
6		
7	DEPOSITION EXHIBITS	PAGE:
8	Number 78 - January 8, 2020 Letter	18
9	Number 79 - Notice of Deposition	33
10	Number 80 - Expert Designation	59
11	Number 81 - LinkedIn Profile	63
12	Number 82 - February 20, 2017 Memo	96
13	Number 83 - E-mail Chain	98
14	Number 84 - E-mail Chain	108
15	Number 85 - E-mail Chain	111
16	Number 86 - June 5, 2018 Memo	120
17	Number 87 - E-mail Chain	137
18	Number 88 - E-mail Chain	140
19	Number 89 - E-mail Chain	144
20	Number 90 - E-mail Chain	150
21	Number 91 - Contingency Plan	158
22	Number 92 - E-mail Chain	177

1 BY MR. MEDLOCK:

2 Q Sir, is tracking the throughput ports
3 of entry on the U.S.-Mexico border operationally
4 important for CBP?

5 A Yes.

6 Q Is it important to have up-to-date
7 information about the throughput of port of entry
8 on the U.S.-Mexico border?

9 A It is.

10 Q Does CBP track the throughput of ports
11 of entry on the U.S.-Mexico border on a daily
12 basis?

13 MR. MEDLOCK: If you're on the phone,
14 can you please mute please.

15 BY MR. MEDLOCK:

16 Q Sorry. Go ahead, sir.

17 A Could you repeat? I'm sorry.

18 Q Sure. Does CBP track the throughput
19 of ports of entry on the U.S.-Mexico border?

20 A We do.

21 Q How often does it do that?

22 A It's daily.

1 Q What sort of report is generated to
2 track the throughput of ports of entry on the
3 U.S.-Mexico border?

4 A There are multiple reports, but many
5 of the reports are just automated. Information
6 is withdrawn from our systems to show how many
7 people are being refused admission, just to track
8 or operational tempo.

9 Q Is the -- are reports from the
10 Migration Crisis Action Team or MCAT used to
11 track operational tempo?

12 A Yes.

13 Q Are reports from the Migration Crisis
14 Action Team used to track the throughput of ports
15 of entry?

16 A The team isn't. The report is -- the
17 report is what it is. It's -- as I understand,
18 it's fully automated.

19 Q But the reports are used. Those
20 reports generated by MCAT are used to track
21 throughput; is that right?

22 A That's one of the things, yes.

1 Q Is it true that a U.S. -- a non-U.S.
2 citizen who's seeking asylum in the country can
3 be paroled and released into the United States
4 under certain circumstances?

5 A Yes.

6 Q Who makes the determination regarding
7 whether an asylum seeker should be paroled and
8 released into the U.S.?

9 A That decision is made in collaboration
10 with ICRO.

11 Q And who makes that decision in
12 collaboration with ICRO?

13 A I think it's done jointly.

14 Q When it's done jointly, who on the OFO
15 side is part of that joint decision-making
16 process?

17 A It's the port management, those that
18 are responsible for the processing of migrants.

19 Q Currently under what circumstances
20 will asylum seekers be paroled and released into
21 the U.S.?

22 A The main reason would be when ICRO is

1 unable to take custody of individuals for certain
2 demographics.

3 Q When you say "certain demographics,"
4 what do you mean?

5 A Generally they have plenty of space
6 for single adults. They are challenged when it
7 comes to housing and detaining family units.

8 Q Has the policy that CBP follows with
9 respect to paroling asylum seekers changed at all
10 since 2016?

11 A Not sure if I understand your
12 question.

13 Q Sure. Have the circumstances under
14 which an asylum seeker will be paroled and
15 released into the U.S. changed at all since 2016?

16 A I don't recall any changes.

17 Q Is it the case that noncitizens
18 seeking asylum in the U.S. can be processed in
19 regular removal proceedings and given a notice to
20 appear?

21 A I guess I don't understand your
22 question. I'm sorry.

1 Q Do you understand the difference
2 between a regular removal proceeding and
3 expedited removal proceeding?

4 A I do.

5 Q When a noncitizen is seeking asylum in
6 the U.S. at a port of entry, they can be
7 processed under either regular removal
8 proceedings or expedited removal proceedings; is
9 that right?

10 A Correct.

11 Q And if they're processed under regular
12 removal proceedings, they can be given a NTA or
13 notice to appear; is that right?

14 MS. SHINNERS: Object to the scope.
15 Go ahead.

16 THE WITNESS: CBP has mandatory
17 detention for individuals we're encountering. So
18 in working with the ERO, if they are at a
19 position where they can't take individuals, then
20 in coordination with ICRO, ERO would be paroling
21 that person.

22 BY MR. MEDLOCK:

1 Q You mentioned that CBP has mandatory
2 detention. Has that always been the case?

3 A Yes. Sorry. Go ahead.

4 MS. SHINNERS: Objection; vague. Go
5 ahead.

6 BY MR. MEDLOCK:

7 Q Did you understand my question?

8 A Could you repeat it one more time?

9 Q Sure. In your answer -- prior answer
10 you said CBP has mandatory detention. What did
11 you mean by that?

12 A We're required by law to detain those
13 that we're encountering. There are situations,
14 as you brought up, where we have discretion to
15 parole individuals or in collaboration with ERO
16 individuals that are paroled.

17 Q Has the -- has there been any policies
18 that have been issued since 2016 that restrict
19 the discretion of CBP to parole asylum seekers
20 who are processed at ports of entry?

21 A If the premise is we detain everybody
22 when ERO is unable to take individuals, then we

1 may invoke the parole along with ERO.

2 MR. MEDLOCK: Mark the next exhibit.

3 (Deposition Exhibit Number 82 was
4 marked for identification and attached to the
5 transcript.)

6 BY MR. MEDLOCK:

7 Q I've marked Exhibit 82 to your
8 deposition, sir. It's a multipage document that
9 bears the Bates numbers -- those are the numbers
10 in the bottom right AOL-DEF-4 through AOL-DEF-16.

11 My first question to you, does this
12 appear to be a February 20, 2017 memorandum from
13 John Kelly who was at the time secretary of DHS?

14 A What's the question?

15 Q Does this appear to be --

16 A Yes, sir.

17 Q Okay. Amongst others, this memorandum
18 is for Kevin McAleenan who at the time was acting
19 commissioner of CBP, correct?

20 A Correct.

21 Q I'd like to direct your attention to
22 the second page, which is AOL-DEF-5. At the top

1 honest with you.

2 BY MR. MEDLOCK:

3 Q Have you heard the term "detention
4 capacity" used with respect to processing asylum
5 seekers at ports of entry on the U.S.-Mexico
6 border?

7 A I have.

8 Q How does CBP define the term
9 "detention capacity"?

10 A It's a couple different variables --
11 multiple variables but two main kind of buckets
12 I'll call them is our actual physical capacity
13 and then based on our operational priorities and
14 impact that falls from that and the attention
15 that we provide our priority mission, that all
16 feeds into our capacity. Not only that, but also
17 the demographics of the individuals that we're
18 encountering, the types of situations that we're
19 interacting with, vehicle seizures, criminal
20 arrests, migrants processing are lots of
21 different factors that will feed into that
22 operational capacity.

1 Q I want to be clear. I'm asking about
2 detention capacity, not operational capacity. Do
3 you understand there's a difference between the
4 two terms?

5 A I think my answer still stands.
6 Detention capacity, our ability to process
7 individuals is not solely on physical capacity.
8 It's what we're doing with the grand scope of
9 what we're doing at the port of entry feeds into
10 what we're able to.

11 Q Is there any difference between
12 detention capacity and operational capacity as
13 those two terms are used at CBP?

14 A They're totally different.

15 Q How is detention capacity different
16 from operational capacity?

17 A Detention capacity -- well, depends on
18 how you view it. Detention capacity really is
19 the number of individuals that we're able to take
20 in a particular room. So an example would be
21 Hidalgo port of entry, four different detention
22 rooms, three of them have they're wet cells where

1 they have full facilities, one doesn't. So if
2 they were -- depending upon the demographics of
3 what we're dealing with, criminal arrests,
4 unaccompanied children, a family that is ill, our
5 capacity to take in per room really dictates upon
6 what we're dealing with.

7 So to say that a room -- you can only
8 take four people in that room really gets fed
9 into what we're dealing with. So four people
10 aren't just four people. If we have one person
11 who's traveling alone, a felon, he's going to
12 take up that whole room. We don't have the
13 capacity to put three more people in there. Does
14 that make sense?

15 Q That makes sense. I'm trying to get
16 to something a little more fundamental than what
17 you're getting at there. Let me give you another
18 example.

19 Is there a known detention capacity
20 for the AEU at San Ysidro?

21 A There's a known physical capacity.

22 Q And that's 316 individuals currently,

1 correct?

2 A Yes.

3 Q When used with respect to AEU at San
4 Ysidro, what does the term "detention capacity"
5 refer to?

6 A Repeat the question again.

7 Q Sure. So you have a physical capacity
8 of 316 individuals at the AEU at San Ysidro.
9 What does -- what would the detention capacity of
10 the AEU at San Ysidro be?

11 A That is the physical capacity.

12 Q Okay. And the operational capacity
13 would depend on the factors that you were just
14 describing?

15 A Yes, sir.

16 Q That's the difference between
17 detention capacity and operational capacity,
18 correct?

19 A Correct.

20 Q At some point did OFO move from using
21 detention capacity as a metric to using
22 operational capacity as its metric?

1 A No.

2 (Deposition Exhibit Number 84 was
3 marked for identification and attached to the
4 transcript.)

5 BY MR. MEDLOCK:

6 Q Sir, I put in front of you marked as
7 Exhibit 84 to your deposition. It's a multipage
8 document that bears the Bates numbers
9 AOL-DEF-00274915 through 916. And Exhibit 84,
10 sir, is a July 6 through July 9, 2018, e-mail
11 chain from Frank Longoria to Juan Chavez, Alberto
12 Flores, David Gonzalez, and others, correct?

13 A I see that, yes.

14 Q I want to focus on the July 6, 2018,
15 e-mail that Frank Longoria sent at 2:59 p.m.

16 A Okay.

17 Q If you just flip to that e-mail, Frank
18 Longoria was assistant director of field
19 operations for the Laredo field office, correct?

20 A Correct.

21 Q And the subject line of that e-mail is
22 "Queue management: 30 days in."

1 Q In the bottom right-hand corner it
2 should say Page 2, Page 3.

3 A No. I don't have page numbers.

4 Q You're way beyond me. If you can flip
5 at the beginning of the document. Do you see
6 where it says Page 1, Page 2?

7 A Got it.

8 Q Just keeping going past Page 8. Ninth
9 page is Annex A.

10 A Got it.

11 Q Are you with me?

12 A Appendices generally are at the back
13 of the document. That's why I flipped to the
14 back.

15 Q Correct. It seems the back of the
16 document seems to start after Page 8 in this
17 particular one, sir. So at the top of that page
18 it reads, Annex A, Port of Brownsville, Laredo
19 field office contingency plan addressing possible
20 mass migration influxes."

21 Do you see that?

22 A I do.

1 Q [REDACTED]

2 [REDACTED]

3 Do you see that?

4 A I do.

5 Q I'm on subsection B of that that
6 begins with "The port director will implement."

7 A Okay.

8 Q That reads, "The port director will
9 implement a phased approach to managed mass
10 migration."

11 Did I read that correctly?

12 A Yes.

13 Q And then there's a reference to [REDACTED]
14 [REDACTED]

15 Do you see that?

16 A Yes.

17 Q [REDACTED]
18 [REDACTED]

19 Do you see that?

20 A I do.

21 Q And it indicates when organic
22 capabilities are strained, the port director

1 [REDACTED]

2 [REDACTED]

3 are blacked out. Do you see that?

4 A I do.

5 Q [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 Do you see that?

10 A I do.

11 Q And my question is, when determining
12 whether a port director should exercise their
13 discretion to engage in metering, should that --
14 should port directors take into account whether
15 they can get assistance from other ports of entry
16 or U.S. Border Patrol stations or substations in
17 processing migrants?

18 A Are you asking me in regards to this
19 document?

20 Q I'm asking when you say -- when we say
21 that operational capacity has gotten to a point
22 where a port needs to engage in metering, does

1 that take into account the ability to increase
2 throughput by using other ports or Border Patrol
3 stations?

4 A It seems as though this document says.

5 Q So ports can increase their throughput
6 in certain ways, correct? They can use Border
7 Patrol substations? They can use other ports of
8 entry; is that right?

9 A This is a mass migration document.

10 Q Sure.

11 A This is their plans. This is what the
12 document says.

13 Q Sure. And when there's -- when
14 there's mass migration, a port that's not
15 going -- that isn't open 24/7 could increase the
16 overtime cap and start processing asylum seekers
17 24/7, correct?

18 A You asked a couple different questions
19 there.

20 Q What are the two different questions?

21 A You asked about overtime caps.

22 Q Sure. When a port is -- is dealing

1 with mass migration and it's not a port that's
2 open 24 hours a day, 7 days a week, that port can
3 move to being open 24 hours a day, 7 days a week
4 to increase their throughput of asylum seekers;
5 is that right?

6 A This document is referencing a
7 significant event. It's not -- this is not a
8 current state. This is not a day-to-day -- this
9 is not a standard operation procedures for port
10 of entry. So mass migration event document.

11 Q I understand that. But this is --

12 A That's the answer.

13 Q Okay. And my question is, this is an
14 option that's available to a port of entry when
15 their resources become constrained because of the
16 number of asylum seekers they have to process; is
17 that right?

18 A In relation to an event that this is
19 put together for.

20 Q Is that a yes in relation to that
21 event?

22 A That was my answer.

1 Q Okay. So my question is, a port
2 director has a situation where a number of asylum
3 seekers that are waiting either in shelters in
4 Mexico or at the boundary line exceed the
5 operational capacity of the port, one of the
6 options that the port director has is to increase
7 the throughput of the port by relying on U.S.
8 Border Patrol substations; is that right?

9 A In relation to a specific event --

10 Q Just generally they can do that. Do
11 they have the discretion to do that?

12 A You're asking me about a document that
13 references --

14 Q You can put the document aside.

15 A Okay.

16 Q Let's just talk generally. You said
17 that port directors have discretion to deal with
18 processing asylum seekers with respect -- when
19 taking into account the other mission sets --

20 A They do.

21 Q -- that CBP has; is that right?

22 A Correct.

1 Q Do port directors also have the
2 discretion to use Border Patrol substations and
3 stations to increase the throughput of asylum
4 seekers?

5 A We have at times -- we have at times
6 had that capability, yes. So PDN in our current
7 MPP process, when individuals are being returned
8 to Mexico after their first hearing, in some
9 instances they're claiming asylum -- fear of
10 Mexico, so in very large numbers. So in those
11 unique circumstances, in El Paso for example, the
12 Border Patrol station's right below our operation
13 at PDN, we would use Border Patrol facilities for
14 that unique situation with our officers providing
15 the care, feeding, and security of those
16 migrants.

17 Q Do port directors also have the
18 discretion to increase the throughput of asylum
19 seekers by using waiting areas, lobbies, other
20 buildings in the port facility to temporarily
21 house and process asylum seekers?

22 A We have done that in the past. In

1 particular, in San Diego during the Haitian
2 migration influx where we converted spaces that
3 weren't intended for detention, hallways,
4 conference rooms, lunch rooms, et cetera. But
5 that was a very difficult time and something that
6 we learned from.

7 We're very, very fortunate that nobody
8 was hurt or there was any dangerous situations,
9 medical situations. It was difficult and
10 something that we don't want to do again for the
11 health, safety of the migrants and for our
12 employees.

13 Q So does a port director have
14 discretion to use those spaces or has OFO
15 headquarters decided that that cannot happen in
16 the future?

17 A The instruction has been following
18 2016 that we will not take that risky approach of
19 placing people in unsafe situations where in
20 rooms where -- not designed for detention, unsafe
21 for the migrants and unsafe for our employees.

22 Q Are you aware of something called

1 MAYER BROWN LLP
Matthew H. Marmolejo (CA Bar No. 242964)
2 *mmarmolejo@mayerbrown.com*
350 S. Grand Avenue
3 25th Floor
Los Angeles, CA 90071-1503
4 Ori Lev (DC Bar No. 452565)
(*pro hac vice*)
5 *olev@mayerbrown.com*
Stephen M. Medlock (VA Bar No. 78819)
6 (*pro hac vice*)
smedlock@mayerbrown.com
7 1999 K Street, N.W.
Washington, D.C. 20006
8 Telephone: +1.202.263.3000
Facsimile: +1.202.263.3300
9

SOUTHERN POVERTY LAW CENTER
10 Melissa Crow (DC Bar No. 453487)
(*pro hac vice*)
11 *melissa.crow@splcenter.org*
1101 17th Street, N.W., Suite 705
12 Washington, D.C. 20036
Telephone: +1.202.355.4471
13 Facsimile: +1.404.221.5857

14 *Additional counsel listed on next page*
15 *Attorneys for Plaintiffs*

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 Al Otro Lado, Inc., *et al.*,

19 Plaintiffs,

20 v.

21 Chad F. Wolf,¹ *et al.*,

22 Defendants.
23
24
25
26
27

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 6 IN SUPPORT OF
PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF THEIR MOTION
FOR SUMMARY JUDGMENT**

FILED UNDER SEAL

28 ¹ Acting Secretary Wolf is automatically substituted for former Acting Secretary
McAleenan pursuant to Fed. R. Civ. P. 25(d).

1 CENTER FOR CONSTITUTIONAL RIGHTS

2 Baher Azmy (NY Bar No. 2860740) (*pro hac vice*)

3 *bazmy@ccrjustice.org*

4 Ghita Schwarz (NY Bar No. 3030087) (*pro hac vice*)

5 *gschwarz@ccrjustice.org*

6 Angelo Guisado (NY Bar No. 5182688) (*pro hac vice*)

7 *aguisado@ccrjustice.org*

8 666 Broadway, 7th Floor

9 New York, NY 10012

10 Telephone: +1.212.614.6464

11 Facsimile: +1.212.614.6499

12 SOUTHERN POVERTY LAW CENTER

13 Sarah Rich (GA Bar No. 281985) (*pro hac vice*)

14 *sarah.rich@splcenter.org*

15 Rebecca Cassler (MN Bar No. 0398309) (*pro hac vice*)

16 *rebecca.cassler@splcenter.org*

17 150 E. Ponce de Leon Ave., Suite 340

18 Decatur, GA 30030

19 Telephone: +1.404.521.6700

20 Facsimile: +1.404.221.5857

21 AMERICAN IMMIGRATION COUNCIL

22 Karolina Walters (DC Bar No. 1049113) (*pro hac vice*)

23 *kwalters@immcouncil.org*

24 1331 G St. NW, Suite 200

25 Washington, D.C. 20005

26 Telephone: +1.202.507.7523

27 Facsimile: +1.202.742.5619

28

19

20

21

22

23

24

25

26

27

28

From: Owen, Todd C (AC OFO)
Sent: Friday, November 11, 2016 2:55:27 PM
To: MCALEENAN, KEVIN K; WAGNER, JOHN P
Subject: RE: Metering in TX

Deputy, we are on board with the metering. Wanted to express this verbally with the SWB DFOs as opposed to a written record. I thought we had advised them via telephone last night to start, and that this would be among the various custody issues to discuss in more depth next week.
We will call the 4 DFOs right now.

Todd C. Owen
Executive Assistant Commissioner
Office of Field Operations
U.S. Customs & Border Protection

From: MCALEENAN, KEVIN K
Sent: Friday, November 11, 2016 7:48:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P
Subject: Metering in TX

EAC/DEAC,
Just wanted to touch base directly because I'm not sure it was conveyed with full clarity from CAT. C1 and I briefed S1 that we wanted to increase efforts to meter arrivals of non-UAC, non-Mexican CF cases mid-bridge. If INAMI is not willing to help, we will push up to the line and hold them back there. This will be mostly CENTAM families. Please advise if you have concerns and let me know how implementation goes.
KM

1 MAYER BROWN LLP
Matthew H. Marmolejo (CA Bar No. 242964)
2 *mmarmolejo@mayerbrown.com*
350 S. Grand Avenue
3 25th Floor
Los Angeles, CA 90071-1503
4 Ori Lev (DC Bar No. 452565)
(*pro hac vice*)
5 *olev@mayerbrown.com*
Stephen M. Medlock (VA Bar No. 78819)
6 (*pro hac vice*)
smedlock@mayerbrown.com
7 1999 K Street, N.W.
Washington, D.C. 20006
8 Telephone: +1.202.263.3000
Facsimile: +1.202.263.3300
9

SOUTHERN POVERTY LAW CENTER
10 Melissa Crow (DC Bar No. 453487)
(*pro hac vice*)
11 *melissa.crow@splcenter.org*
1101 17th Street, N.W., Suite 705
12 Washington, D.C. 20036
Telephone: +1.202.355.4471
13 Facsimile: +1.404.221.5857

14 *Additional counsel listed on next page*
15 *Attorneys for Plaintiffs*

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 Al Otro Lado, Inc., *et al.*,

19 Plaintiffs,

20 v.

21 Chad F. Wolf,¹ *et al.*,

22 Defendants.
23
24
25
26
27

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 8 IN SUPPORT OF
PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF THEIR MOTION
FOR SUMMARY JUDGMENT**

FILED UNDER SEAL

28 ¹ Acting Secretary Wolf is automatically substituted for former Acting Secretary
McAleenan pursuant to Fed. R. Civ. P. 25(d).

1 CENTER FOR CONSTITUTIONAL RIGHTS

2 Baher Azmy (NY Bar No. 2860740) (*pro hac vice*)

3 *bazmy@ccrjustice.org*

4 Ghita Schwarz (NY Bar No. 3030087) (*pro hac vice*)

5 *gschwarz@ccrjustice.org*

6 Angelo Guisado (NY Bar No. 5182688) (*pro hac vice*)

7 *aguisado@ccrjustice.org*

8 666 Broadway, 7th Floor

9 New York, NY 10012

10 Telephone: +1.212.614.6464

11 Facsimile: +1.212.614.6499

12 SOUTHERN POVERTY LAW CENTER

13 Sarah Rich (GA Bar No. 281985) (*pro hac vice*)

14 *sarah.rich@splcenter.org*

15 Rebecca Cassler (MN Bar No. 0398309) (*pro hac vice*)

16 *rebecca.cassler@splcenter.org*

17 150 E. Ponce de Leon Ave., Suite 340

18 Decatur, GA 30030

19 Telephone: +1.404.521.6700

20 Facsimile: +1.404.221.5857

21 AMERICAN IMMIGRATION COUNCIL

22 Karolina Walters (DC Bar No. 1049113) (*pro hac vice*)

23 *kwalters@immcouncil.org*

24 1331 G St. NW, Suite 200

25 Washington, D.C. 20005

26 Telephone: +1.202.507.7523

27 Facsimile: +1.202.742.5619

28

19

20

21

22

23

24

25

26

27

28

**DEPARTMENT OF HOMELAND SECURITY
U.S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY**

REPORT OF INVESTIGATION

**Office of Professional Responsibility
San Diego, CA**

Case# 201802466




**THIS REPORT CONTAINS SENSITIVE LAW ENFORCEMENT MATERIAL. IT MAY NOT BE
LOANED OUTSIDE YOUR AGENCY AND, EXCEPT IN CONNECTION WITH OFFICIAL
AGENCY ACTION, NO PORTION OF THE REPORT MAY BE COPIED OR DISTRIBUTED
WITHOUT THE KNOWLEDGE AND CONSENT OF U.S. CUSTOMS AND BORDER PROTECTION**

OFFICIAL USE ONLY

SENSITIVE

Page 1 of 11

 <p align="center">DEPARTMENT OF HOMELAND SECURITY Customs and Border Protection</p> <p align="center">REPORT OF INVESTIGATION</p>		1. CASE NUMBER 201802466
		PREPARED BY ANTUNEZ, YANINA C
		2. REPORT NUMBER 008
3. TITLE [REDACTED] CBP OFFCR/0601 Detainee/Alien - Abuse (Physical Abuse)/SAN YSIDRO, SAN DIEGO, CA		
4. FINAL RESOLUTION		
5. STATUS Closing Report	6. TYPE OF REPORT Blue Book	7. RELATED CASES
8. TOPIC CBPO [REDACTED] dragged a UDA by the legs and returned the UDA to Mexico at the SY/POE.		
9. SYNOPSIS <p>On December 18, 2017, [REDACTED] LE [REDACTED] contacted Senior Special Agent (SSA) Brian Miller, CBP, Office of Professional Responsibility, San Diego, CA (CBP OPR/San Diego), to report Officer (CBPO) [REDACTED] allegedly pulled an Undocumented Alien (UDA) by the legs and returned the UDA to Mexico.</p> <p>SSAs from the CBP OPR/San Diego, IOD Special Agent in Charge San Diego (SAC/San Diego) reviewed SY/POE video footage, performed record checks, and conducted CBPOs interviews. On July 24, 2018, CBPO ORRELL admitted he dragged a UDA by the legs and returned the UDA to Mexico via the SY/POE.</p>		
10. CASE OFFICER (Print Name & Title) ANTUNEZ, YANINA C - CBP OPR Special Agent	11. COMPLETION DATE 19-OCT-2018	14. ORIGIN OFFICE CBP OPR SAC SAN DIEGO
12. APPROVED BY(Print Name & Title) JEFFERY ARNDT - CBP OPR Special Agent Supervisor	13. APPROVED DATE 23-OCT-2018	15. TELEPHONE NUMBER [REDACTED]
<small>THIS DOCUMENT IS LOANED TO YOU FOR OFFICIAL USE ONLY AND REMAINS THE PROPERTY OF THE DEPARTMENT OF HOMELAND SECURITY. ANY FURTHER REQUEST FOR DISCLOSURE OF THIS DOCUMENT OR INFORMATION CONTAINED HEREIN SHOULD BE REFERRED TO HEADQUARTERS, DEPARTMENT OF HOMELAND SECURITY, TOGETHER WITH A COPY OF THE DOCUMENT.</small>		
<small>THIS DOCUMENT CONTAINS INFORMATION REGARDING CURRENT AND ON-GOING ACTIVITIES OF A SENSITIVE NATURE. IT IS FOR THE EXCLUSIVE USE OF OFFICIAL U.S. GOVERNMENT AGENCIES AND REMAINS THE PROPERTY OF THE DEPARTMENT OF HOMELAND SECURITY. IT CONTAINS NEITHER RECOMMENDATIONS NOR CONCLUSIONS OF THE DEPARTMENT OF HOMELAND SECURITY. DISTRIBUTION OF THIS DOCUMENT HAS BEEN LIMITED AND FURTHER DISSEMINATION OR EXTRACTS FROM THE DOCUMENT MAY NOT BE MADE WITHOUT PRIOR WRITTEN AUTHORIZATION OF THE ORIGINATOR.</small>		

OFFICIAL USE ONLY

SENSITIVE

Confidential


AOL-DEF-00014042

3-SER-603

OFFICIAL USE ONLY

SENSITIVE

Page 2 of 11

 <p style="text-align: center;">DEPARTMENT OF HOMELAND SECURITY</p> <p style="text-align: center;">REPORT OF INVESTIGATION CONTINUATION</p>	<p>1. CASE NUMBER</p> <p>201802466</p> <p>PREPARED BY</p> <p>ANTUNEZ, YANINA C</p> <p>2. REPORT NUMBER</p> <p>008</p>
<p>10. NARRATIVE</p> <p>ALLEGATION ONE: On January 2, 2018, CBPO [REDACTED] dragged a UDA by the legs to return the UDA to Mexico at the SY/POE; Sustained.</p>	
<p style="text-align: center;">AC, WP, DP, LE</p>	
<p>ALLEGATION TWO: CBPO [REDACTED] did not follow CBP policy and procedures pertaining to the processing of asylum seekers; Sustained.</p>	
<p>PROSECUTORIAL ACTION: N/A.</p>	
<p>On December 18, 2017, SSA Miller, CBP OPR/San Diego, received a call from [REDACTED] LE who reported an allegation of physical abuse of a traveler. [REDACTED] LE provided a written summary and video footage, which indicated that on January 2, 2017, CBPO [REDACTED] allegedly pulled a UDA by the legs, and returned the UDA to Mexico (Exhibit 1 and 2).</p>	
<p style="text-align: center;">AC, WP, DP, LE</p>	
<p>The allegation reported states, on January 2, 2017, a group of five UDAs sought asylum at the SY/POE west pedestrian inspection area; four UDAs were escorted back to Mexico and one was processed as a credible fear/asylum applicant.</p>	
<p>The above-mentioned video footage was thoroughly reviewed by CBP management as follows:</p>	
<p>The video footage indicated five UDAs approached CBPO [REDACTED] pedestrian primary inspection area. CBPO [REDACTED] stepped out of his booth and directed the UDAs to Mexico. The UDAs did not comply and walked past CBPO [REDACTED] booth into the U.S. CBPOs in the vicinity assisted CBPO [REDACTED] and once three of the UDAs were subdued, they were escorted back to Mexico. During that time, CBPO [REDACTED] was struggling with a non-compliant UDA who dropped to the ground and did not allow CBPO [REDACTED] get a hold of his arms. Instead, CBPO [REDACTED] grabbed the UDA by the legs and dragged the UDA back to Mexico. The fifth UDA, later identified as, [REDACTED] LE was processed as an Expedited Removal/Credible Fear case (ER/CF).</p>	

OFFICIAL USE ONLY

SENSITIVE


Confidential

AOL-DEF-00014043

OFFICIAL USE ONLY

SENSITIVE

Page 3 of 11

 <p style="text-align: center;">DEPARTMENT OF HOMELAND SECURITY</p> <p style="text-align: center;">REPORT OF INVESTIGATION CONTINUATION</p>	1. CASE NUMBER 201802466
	PREPARED BY ANTUNEZ, YANINA C
	2. REPORT NUMBER 008

10. NARRATIVE

On April 4, 2018, [LE] was interviewed at his residence in Washington, D.C. by SSAs Ralph Velez and Shannon Malone, CBP OPR/Washington. [LE] was notified the interview would also be audio and video recorded. The DVD obtained from the interview was properly labeled and stored in the case file.

The interview below which was conducted in the Spanish language was transcribed and translated by SSA Yanina Antunez (Exhibit 3).

The interview is a summary and it is not intended to be a verbatim account and does not memorialize all statements made during the interview. The video recording captured the actual colloquialisms and words spoken. The recording below is uniquely identified by authentication code [LE] (Exhibit 4).

After being advised of the identity of the interviewing SSAs, the nature of the interview, and review of the SY/POE video footage, [LE] provided the following information:

According to [LE] on January 2, 2017, he and four companions sought political asylum at the Otay Mesa Port of Entry (Otay/POE). However, the CBPO at primary inspection insulted them and directed them to the SY/POE.

Once [LE] and his companions arrived at the SY/POE, [LE] approached the CBPO at primary inspection and applied for entry. The CBPO left the primary inspection area, walked toward [LE] companions and directed them to the "Beta Group" south of the SY/POE.

[Agent's Note: The Beta group is a non-profit organization in Mexico who protects migrants.]

Despite of the CBPO's orders, [LE] and his companions did not comply. Several of [LE] [LE] companions were directed to exit the SY/POE and [LE] was cornered against the wall, where he was subsequently arrested.

During [LE] arrest [LE] observed UDA [LE] Last Name Unknown (LNU) refusing to follow the CBPO's orders and dropped to the ground. At that point, the CBPO grabbed him/her foot and dragged him/her towards the SY/POE's exit gate.

In closing, [LE] stated that although he and his companions were all wearing black clothing, he was still able to identify the CBPO (CBPO [REDACTED] and [LE] LNU. The video footage clearly showed the CBPO (CBPO [REDACTED] dragging [LE] LNU.

OFFICIAL USE ONLY

SENSITIVE


Confidential

AOL-DEF-00014044

OFFICIAL USE ONLY

SENSITIVE

Page 4 of 11

 <p style="text-align: center;">DEPARTMENT OF HOMELAND SECURITY</p> <p style="text-align: center;">REPORT OF INVESTIGATION CONTINUATION</p>	1. CASE NUMBER 201802466
	PREPARED BY ANTUNEZ, YANINA C
	2. REPORT NUMBER 008

10. NARRATIVE

On June 7, 2017, SSA Antunez emailed Supervisory CBPO (SCBPO) [REDACTED], SY/POE regarding a group of UDAs that crossed into the U.S. via CBPO [REDACTED] primary booth on January 2, 2017. SSA Antunez particularly inquired about a UDA by the name of [REDACTED] LE [REDACTED] LNU and if he/she [REDACTED] LE [REDACTED] NU) sought asylum sometime after January 2, 2017. SCBPO [REDACTED] provided SSA Antunez names of UDAs who sought asylum, however none matched the description or name of [REDACTED] LE [REDACTED] (Exhibit 5).

On June 7, 2018, Watch Commander (WC) [REDACTED] was interviewed at the SY/POE by SSAs Antunez and Christian Vermilya, CBP OPR/San Diego. WC [REDACTED] was notified the interview would also be audio and video recorded. The DVD obtained from the interview was properly labeled and stored in the case file.

The interview below is a summary and it is not intended to be a verbatim account and does not memorialize all statements made during the interview. The video recording captured the actual words spoken. The recording below is uniquely identified by authentication code [REDACTED] LE [REDACTED] (Exhibit 6).

After being advised of the identity of the interviewing SSAs, and the nature of the interview, WC [REDACTED] provided the following information:

According to WC [REDACTED] on or about October 2017, [REDACTED] LE [REDACTED] called WC [REDACTED] into his office and asked her to review video footage from an incident that occurred on January 2, 2017, involving a group of UDAs and CBPO [REDACTED]. The video footage showed CBPO [REDACTED] pulling a UDA by the legs to return to Mexico. After WC [REDACTED] reviewed the video footage, she referred to her end of shift reports to confirm the incident. However, the end of shift reports did not confirm the indent because no one (CBPOs) reported anything.

On January 2, 2017, WC [REDACTED] also stated the SY/POE was at adequate capacity. If the SY/POE would have been at maximum capacity, the UDAs would have been denied entry before they made it to the primary inspection booth.

Furthermore, WC [REDACTED] stated that on said date, during a CBP Standard Operating Procedure, "Muster" briefing at the San Ysidro and Otay Mesa POEs, under no circumstances CBPOs were to deny asylum applicants entry into the U.S. CBPOs were also instructed to take into custody any asylum applicant encountered on primary inspection as long as the POE was at adequate capacity. After the briefings were conveyed, all of the CBPOs signed a muster sign-up sheet and acknowledged they were going to adhere by the new procedures (Exhibit 7).

OFFICIAL USE ONLY

SENSITIVE


Confidential

AOL-DEF-00014045

OFFICIAL USE ONLY

SENSITIVE

Page 5 of 11

 <p style="text-align: center;">DEPARTMENT OF HOMELAND SECURITY</p> <p style="text-align: center;">REPORT OF INVESTIGATION CONTINUATION</p>	1. CASE NUMBER 201802466
	PREPARED BY ANTUNEZ, YANINA C
	2. REPORT NUMBER 008

10. NARRATIVE

[Agent's Note: The CBP Standards of Operating Procedures are relayed during "Muster" briefings. Muster briefings are informational short meetings conducted by management with CBPOs prior, during, or after the end of their shift. After said muster briefings, CBPOs sign a muster sign-up sheet in acknowledgement of the informational meeting. However, during this investigation CBP Management was unable to provide CBP OPR a copy of a sign-up sheet indicating CBPO [REDACTED] acknowledged any of the muster briefings.]

After WC [REDACTED] reviewed the video footage, she stated CBPO [REDACTED] removed a UDA to Mexico and the other UDAs ran through primary inspection. At that point, the CBPOs assisting CBPO [REDACTED] should have taken the UDAs into custody and processed them via the admissibility unit. Upon CBPO [REDACTED] return, it appeared as if he was pointing at the CBPOs directing them not to allow the UDAs into the country.

According to the video footage, [REDACTED] LE [REDACTED] LNU purposely threw himself/herself to the ground when CBPO [REDACTED] attempted to lift his/her arm, but he/she did not comply.

In Closing, WC McCulloch said she was surprised CBPO [REDACTED] did not adhere by the muster's procedures. CBPO [REDACTED] has worked in the admissibility unit, expedited removals and credible fear cases. WC [REDACTED] stated, "He is just not someone new, he knows about asylum seekers and I was shocked. He knows better than to not process asylum seekers because of his background."

Lastly, WC [REDACTED] stated that if she would have known about the incident she would have reported the incident to [REDACTED] LE [REDACTED]

On June 7, 2018, Branch Chief (BC) [REDACTED] was interviewed at the SY/POE by SSAs Antunez and Vermilya, CBP OPR/San Diego. BC [REDACTED] was notified the interview would also be audio and video recorded. The DVD obtained from the interview was properly labeled and stored in the case file.

The interview below is a summary and it is not intended to be a verbatim account and does not memorialize all statements made during the interview. The video recording captured the actual words spoken. The recording below is uniquely identified by authentication code [REDACTED] LE [REDACTED] (Exhibit 8).

After being advised of the identity of the interviewing SSAs, and the nature of the interview, BC [REDACTED] provided the following information:

OFFICIAL USE ONLY

SENSITIVE


Confidential

AOL-DEF-00014046

OFFICIAL USE ONLY

SENSITIVE

Page 6 of 11

 <p style="text-align: center;">DEPARTMENT OF HOMELAND SECURITY</p> <p style="text-align: center;">REPORT OF INVESTIGATION CONTINUATION</p>	1. CASE NUMBER 201802466
	PREPARED BY ANTUNEZ, YANINA C
	2. REPORT NUMBER 008
<p>10. NARRATIVE</p> <p>According to BC [REDACTED] on or about June 2017, WC [REDACTED] informed him of an incident that occurred on January 2, 2017, at approximately 2305 hours, involving CBPO [REDACTED] and a group of UDAs at the SY/POE primary inspection area.</p> <p>After BC [REDACTED] was made aware of the aforementioned incident, he reviewed the Operations Chief Log for January 2, 2017. However, the log did not indicate there had been an incident involving CBPO [REDACTED] or a group of UDAs.</p> <p>On the day of the incident, BC [REDACTED] stated that at the beginning of his shift at the SY/POE, he surveyed various areas within the POE and ensured all the CBPOs were in their assign post and equipment was working properly.</p> <p>After BC [REDACTED] made his rounds, he recalled he left the supervisor's office at approximately 2248 hours to the SENTRI office. When BC [REDACTED] returned to the supervisor's office, no one (CBPOs) reported an incident had occurred. BC [REDACTED] said he speculated the incident must have happened when he was surveying the SY/POE.</p> <p>In closing, BC [REDACTED] stated, "I have no knowledge of the event."</p> <p>On July 20, 2018, CBPO [REDACTED] was interviewed at the SY/POE by SSAs Antunez and Sara Hittinger, CBP OPR/San Diego. CBPO [REDACTED] was notified the interview would also be audio and video recorded. The DVD obtained from the interview was properly labeled and stored in the case file.</p> <p>The interview below is a summary and it is not intended to be a verbatim account and does not memorialize all statements made during the interview. The video recording captured the actual words spoken. The recording below is uniquely identified by authentication code</p> <p style="text-align: center;">LE (Exhibit 9).</p> <p>After being advised of the identity of the interviewing SSAs, and the nature of the interview, CBPO [REDACTED] provided the following information:</p> <p>According to CBPO [REDACTED] on January 2, 2017, he was assigned to the primary inspection pedestrian west facility at the SY/POE. It was a slow night at the SY/POE, when all of the sudden CBPO [REDACTED] adjacent to CBPO [REDACTED] primary booth, yelled for assistance. CBPO [REDACTED] observed CBPO [REDACTED] reaching for a subject and he (CBPO [REDACTED]) darted out of his booth to stop the subject. CBPO [REDACTED] grabbed the subject by the arms and asked for</p>	

OFFICIAL USE ONLY

SENSITIVE


Confidential

AOL-DEF-00014047

OFFICIAL USE ONLY

SENSITIVE

Page 7 of 11

 <p style="text-align: center;">DEPARTMENT OF HOMELAND SECURITY</p> <p style="text-align: center;">REPORT OF INVESTIGATION CONTINUATION</p>	1. CASE NUMBER 201802466
	PREPARED BY ANTUNEZ, YANINA C
	2. REPORT NUMBER 008

10. NARRATIVE

immigration documents, but the subject gave him a blank stare. While that was happening CBPOs in the vicinity responded and as soon as they arrived he (CBPO [REDACTED]) turned over the subject to the CBPOs and walked back to his booth. At that moment, CBPO [REDACTED] observed CBPO [REDACTED] drag a subject by the leg towards Mexico. CBPO [REDACTED] was unaware the above-mentioned subjects were seeking asylum. (Time Stamp 04:04:20)

In regards to muster briefings, CBPO [REDACTED] stated he abides by changes and new policies presented to the CBPOs. During CBPO [REDACTED] incident, the muster briefing indicated that all asylum seekers were supposed to be referred to secondary for processing.

In regards to reporting the incident to CBP management, CBPO [REDACTED] reported the incident to the secondary CBPOs who sat next to the supervisor's office and was made aware [REDACTED] LE was an asylum seeker. CBPO [REDACTED] stated that if that would have happened to him, he would have reported the incident to CBP management.

In closing, CBPO [REDACTED] stated he does not like to work with CBPO [REDACTED] because he (CBPO [REDACTED]) sleeps on the job. CBPO [REDACTED] is rude, arrogant and unprofessional to the traveling public and asylum seekers. Although CBPO [REDACTED] is senior to CBPO [REDACTED], he (CBPO [REDACTED]) stated he would not want to learn anything from CBPO [REDACTED] (Time Stamp 07:00:00)

On July 20, 2018, CBPO Alfred [REDACTED] was interviewed at the SY/POE by SSAs Antunez and Hittinger, CBP OPR/San Diego. CBPO [REDACTED] was notified the interview would also be audio and video recorded. The DVD obtained from the interview was properly labeled and stored in the case file.

The interview below is a summary and it is not intended to be a verbatim account and does not memorialize all statements made during the interview. The video recording captured the actual words spoken. The recording below is uniquely identified by authentication code [REDACTED] LE (Exhibit 10).

After being advised of the identity of the interviewing SSAs, and the nature of the interview, CBPO [REDACTED] provided the following information:

According to CBPO [REDACTED] on January 2, 2017, CBPO [REDACTED] requested assistance at the SY/POE primary inspection to manage a group of UDAs. CBPO [REDACTED] responded and assisted with the arrest of a UDA later identified, as [REDACTED] LE However,

OFFICIAL USE ONLY

SENSITIVE


Confidential

AOL-DEF-00014048

OFFICIAL USE ONLY

SENSITIVE

Page 8 of 11

 <p style="text-align: center;">DEPARTMENT OF HOMELAND SECURITY</p> <p style="text-align: center;">REPORT OF INVESTIGATION CONTINUATION</p>	1. CASE NUMBER 201802466
	PREPARED BY ANTUNEZ, YANINA C
	2. REPORT NUMBER 008
<p>10. NARRATIVE</p> <p>CBPO [REDACTED] stated he was unaware UDA [LE] or the rest of the UDAs were asylum seekers. Furthermore, CBPO [REDACTED] did not instruct CBPO [REDACTED] to process the UDAs as asylum seekers. (Time Stamp 06:07:41)</p> <p>During UDA [LE] arrest, CBPO [REDACTED] observed CBPO [REDACTED] drag a UDA by the legs to return the UDA to Mexico.</p> <p>CBPO [REDACTED] referenced the CBP muster briefing at the beginning of the shift and stated CBPOs were instructed to process all UDAs seeking asylum. CBPO [REDACTED] stated, if he would have been the primary CBPO, he would have referred the group of UDAs to secondary inspection for processing and would have reported the incident to CBP management. (Time Stamp 5:53:58)</p> <p>In closing, CBPO [REDACTED] reiterated, during the aforementioned incident, they've (CBPOs) been instructed to process all UDAs seeking asylum. As to why the above-mentioned UDAs were not processed, CBPO [REDACTED] stated he did not know.</p> <p>On July 24, 2018, CBPO [REDACTED] was interviewed at the Otay/POE by SSAs Antunez and Hittinger, CBP OPR/San Diego. CBPO [REDACTED] was notified the interview would also be audio and video recorded. The DVD obtained from the interview was properly labeled and stored in the case file.</p> <p>The interview below is a summary and it is not intended to be a verbatim account and does not memorialize all statements made during the interview. The video recording captured the actual words spoken. The recording below is uniquely identified by authentication code [LE] (Exhibit 11).</p> <p>After being advised of the identity of the interviewing SSAs, and the nature of the interview, CBPO [REDACTED] provided the following information:</p> <p>According to CBPO [REDACTED] at the beginning of 2017, the SY/POE was undergoing an asylum seeker crisis. During that time, CBP management instructed CBPOs assigned to the midnight shift to follow current port policies, which he (CBPO [REDACTED]) said were conflicting and constantly changing. Said policies instructed the CBPOs to stop the UDAs at the limit line within the SY/POE, and other policies instructed the CBPOs to stop the UDAs at the primary booth as long as they did not claim asylum. (Time Stamp 17:28:10)</p>	

OFFICIAL USE ONLY

SENSITIVE


Confidential

AOL-DEF-00014049

OFFICIAL USE ONLY

SENSITIVE

Page 9 of 11

 <p style="text-align: center;">DEPARTMENT OF HOMELAND SECURITY</p> <p style="text-align: center;">REPORT OF INVESTIGATION CONTINUATION</p>	1. CASE NUMBER 201802466
	PREPARED BY ANTUNEZ, YANINA C
	2. REPORT NUMBER 008
<p>10. NARRATIVE</p> <p>The above-mentioned policies indicated the UDAs would have to claim asylum at primary inspection before allowing them into the U.S. However, management instructed the CBPOs to direct UDAs to the Beta group in Tijuana, B.C., Mexico. (Time Stamp 17:29:00)</p> <p>CBPO [REDACTED] explained CBP management kept CBPOs informed of new policies or changes during muster briefings and discussed said policies at the beginning of their shift. However, even though the CBPOs were briefed via a written muster, CBP management verbally directed them differently. (Time Stamp 17:34:18)</p> <p>On January 2, 2017, CBPO [REDACTED] was assigned to the SY/POE primary pedestrian inspection area. CBPO [REDACTED] stated that a group of UDAs approached his booth and one of them placed a folder on the counter. CBPO [REDACTED] immediately identified the UDAs postures as travelers who routinely seek asylum.</p> <p>However, in this case, the UDAs did not say anything; CBPO [REDACTED] simply directed the UDAs (south) to the Beta Group.</p> <p>After CBPO [REDACTED] directed the UDAs to the Beta Group, the UDAs did not follow CBPO [REDACTED] orders and walked passed his (CBPO [REDACTED]) booth without inspection. At that point, the UDAs were in the U.S. illegally and CBPO [REDACTED] requested CBPO assistance.</p> <p>When the UDAs were intercepted, some complied and some did not comply with the CBPOs orders. One of the non-compliant UDAs later identified as LE was arrested and taken into custody. During LE arrest, CBPO [REDACTED] intercepted one of the UDAs and directed him to the Beta Group. However, the UDA did not comply and threw himself/herself to the ground and became limp. CBPO [REDACTED] was then forced to lift him/her up, but since he/she refused to give CBPO [REDACTED] his/her hands or arms, CBPO [REDACTED] dragged him/her by the foot into Mexico.</p> <p>Additionally, CBPO [REDACTED] believed that at the heat of the situation, dragging the UDA into Mexico was the best option given the circumstances. He dragged the UDA into Mexico because he/she refused to follow orders. "Yes, that is what I did." (Time Stamp 17:38:36)</p> <p>CBPO [REDACTED] stated he failed to process the group of UDAs who walked passed his primary booth, due to CBP management's conflicting policies. CBPO [REDACTED] stated, "I do what I am told, what I am saying, I do what I am told. If they don't claim asylum, you could kick them back, if they tell me to process them that is what I am going do."</p>	

OFFICIAL USE ONLY

SENSITIVE


Confidential

AOL-DEF-00014050

OFFICIAL USE ONLY

SENSITIVE

Page 10 of 11

 <p style="text-align: center;">DEPARTMENT OF HOMELAND SECURITY</p> <p style="text-align: center;">REPORT OF INVESTIGATION CONTINUATION</p>	1. CASE NUMBER 201802466
	PREPARED BY ANTUNEZ, YANINA C
	2. REPORT NUMBER 008
<p>10. NARRATIVE</p> <p>Following CBPO [REDACTED] above-mentioned statement, he was shown a copy of a muster briefing and was asked why he did not abide by the muster's instructions. CBPO [REDACTED] stated that was his understanding and that is what he was going to do.</p> <p>When CBPO [REDACTED] was asked if he reported the incident to management, he stated, he probably should have reported the incident, but he did not.</p> <p>According to the CBP Standard of Operating Procedures, CBPOs are to adhere to changes within the intake processing of UDAs seeking asylum. The procedures will ensure proper effectiveness of the CBPOs duties and responsibilities (Reference Exhibit 7).</p> <p>In closing, CBPO [REDACTED] reiterated, the SY/POE was in crisis mode and manned by a skeleton crew. CBPO [REDACTED] stated he believes he performed his duties in good faith and he did not have malice towards the UDA he dragged into Mexico. In hindsight, he made a bad decision.</p> <p>CPBO [REDACTED] did not wish to review the January 2, 2017, incident between him and the UDA.</p> <p>CBPO [REDACTED] does not hold a security clearance.</p>	

OFFICIAL USE ONLY

SENSITIVE


Confidential

AOL-DEF-00014051

OFFICIAL USE ONLY

SENSITIVE

Page 11 of 11

<div style="text-align: center;">  <p>DEPARTMENT OF HOMELAND SECURITY</p> <p>REPORT OF INVESTIGATION Exhibit List</p> </div>	1. CASE NUMBER 201802466
	PREPARED BY ANTUNEZ, YANINA C
	2. REPORT NUMBER 008

1. LE written summary, dated November 16, 2017.
2. SY/POE video footage, dated January 2, 2017.
3. UDA LE video/audio recording, dated April 4, 2018.
4. UDA LE transcription, dated April 4, 2018.
5. SCBPO email, dated June 7, 2018.
6. WC video/audio recording, dated June 7, 2018.
7. Standard Operating Procedures (Muster), dated 6/27/16 to 12/7/17.
8. BC video/audio recording, dated June 7, 2018.
9. CBPO video/audio recording, dated July 20, 2018.
10. CBPO video/audio recording, dated July 20, 2018.
11. CBPO video/audio recording, dated July 24, 2018.

OFFICIAL USE ONLY

SENSITIVE

Confidential

AOL-DEF-00014052

O F F I C I A L U S E O N L Y
DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY

NOVEMBER 16, 2017

201802466

EXHIBIT 1

LE

written summary



DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY
O F F I C I A L U S E O N L Y

201802466

EXHIBIT 1

Confidential

AOL-DEF-00014053

3-SER-614

AC, WP, DP, LE

SUMMARY OF INCIDENT JANUARY 02, 2017:

Report of Findings relates to CBPO [REDACTED] pulling a passenger that attempted to apply for asylum on January 02, 2017 at approximately 2310 hours at the Pedwest facility at the San Ysidro Port of Entry.

The video reviewed reflects that five (5) individuals presented themselves at pedestrian primary booth 12, manned by CBPO [REDACTED]. One of the subjects has a brief discussion with CBPO [REDACTED] at which time CBPO [REDACTED] steps out of the booth to direct the group back to Mexico. The subjects fail to comply and three (3) of the five (5) proceed past the primary booth and attempt to Enter Without Inspection (EWI). CBPO(s) [REDACTED] and [REDACTED] immediately approach the three subjects. CBPO [REDACTED] returns to the post primary area and attempts to escort one of the subjects back to Mexico by placing his hands on the subject initiating movement towards Mexico. CBPO(s) [REDACTED] and [REDACTED] initiate the escort of the other subjects back to Mexico. CBPO(s) [REDACTED] and Paragon contract security guards respond and assist with the escort back to Mexico.

While the group was being escorted, CBPO [REDACTED] struggled with one of the subjects who falls to the ground. CBPO [REDACTED] then grabs at the subject's legs and pulls her towards Mexico for a short distance. From the exterior camera viewed, the subject then stands and walks with the three other subjects who were all escorted back to Mexico.

The fifth subject later identified as [REDACTED] LE [REDACTED] was processed as an Expedited Removal/Credible Fear case (ER/CF). [REDACTED] LE [REDACTED] stated that she was a transgender and that she was traveling with three (3) other transgender persons and a gay man. Those four individuals appear to be the four individuals escorted back to Mexico.

In Secondary a personal search was conducted on [REDACTED] LE [REDACTED] by CBPO [REDACTED] and witnessed by CBPO(s) [REDACTED]
[REDACTED]

The CBPO officers involved in the initial encounter on pedestrian primary where the four subjects were encountered and eventually returned to Mexico were in violation of CBP's policy and guidance provided and mustered to all port of entry personnel on July, September, and November of 2016 reiterating the processing and handling of requests for asylum/credible fear.

The on duty supervisor at PedWest was Branch Chief [REDACTED] and the duty Watch Commander was [REDACTED] who have indicated that they were not notified of the incident.

BACKGROUND:

In the first two quarters of FY 2017 the San Ysidro Port of Entry (SYS) continued to experience a surge of foreign nationals asserting claims of fear of returning to their home countries. San Ysidro continued to reach capacity and had to control the flow of undocumented travelers into our custody through queue management (metering). Queue management started at the San Ysidro POE on May 30, 2016 and concluded in February 2017. Through queue management, which was just one component of San Ysidro's planning to address the waves of incoming mass migration, San Ysidro was able to support an orderly process flow and prevent the facilities at the POEs from becoming dangerous – either to CBP officers or to those individuals being processed or detained by CBP. Queue management was a temporary measure that facilitated a safe process for people to apply to the United States at a time of historic migration movements to the United States along the SWB, including the surge of Haitian nationals arriving at the San Ysidro POE in the latter half of 2016. Queue management was conducted in partnership with entities of the government of Mexico responsible for immigration and humanitarian issues, as those entities similarly wanted to maintain an orderly flow of migrants. During periods when queue management protocols were used, Mexican nationals expressing a fear of return to Mexico were processed by the San Ysidro without delay, as their situation was distinct from those of third-country nationals, who were in Mexico awaiting processing by CBP for entry into the United States, and whose claim (if presented) related to the fear of returning to their country of origin, not the fear of remaining in Mexico. CBP officials engaged with various NGOs on the queue management process while it was happening. The San Ysidro Port Director held monthly in-person meetings with more than a dozen representatives from many non-governmental and humanitarian service organizations, to receive their feedback on how queue management was occurring. In July, September, and November of 2016 musters were sent to all San Ysidro and Otay Mesa CBP Officers informing them that under no circumstances will an asylum applicant be denied entry into the U.S and that any applicant for asylum encountered on primary should be taken into custody.

In January of 2017 San Ysidro was at capacity and under queue management protocols (metering). The AEU end of shift (2200) numbers for the time period of 01/02/17-01/04/17 indicate 292, 301 and 288. However, the situation in January was dynamic and fluid. Detention space was dependent on movement from ICE/ERO. San Ysidro were metering to capacity during that time period with additional numbers detained in AEU such as prosecutions and Material Witnesses not included in the AEU End of Shift report. Officers were briefed that any

applicant for asylum encountered on primary should be taken into custody, escorted to the security office, and transported to the PedWest facility for proper intake and processing.

AC, WP, DP, LE

O F F I C I A L U S E O N L Y
DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY

JANUARY 2, 2017
201802466
EXHIBIT 2
SY/POE video footage



DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY
O F F I C I A L U S E O N L Y

201802466

EXHIBIT 2

Confidential

AOL-DEF-00014057

3-SER-618

O F F I C I A L U S E O N L Y
DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY

APRIL 4, 2018

201802466

EXHIBIT 3

LE

video/audio recording



DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY
O F F I C I A L U S E O N L Y

201802466

EXHIBIT 3

Confidential

AOL-DEF-00014058

O F F I C I A L U S E O N L Y
DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY

APRIL 4, 2018

201802466

EXHIBIT 4

LE

interview's transcription



DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY
O F F I C I A L U S E O N L Y

201802466

EXHIBIT 4

Confidential

AOL-DEF-00014059

3-SER-620

April 4, 2018

201802466 CBP [REDACTED] /SSA Yanina Antunez/CBP OPR/San Diego

SSA Shannon Malone and SSA Ralph Velez/CBP OPR/Washington, D.C.

14:11:23 10:01 am

[REDACTED] LE

**The following is a transcription of
interview:**

[REDACTED] LE

Ralph - Declaracion de el

[REDACTED] LE

SSA Shannon Malon and SSA Ralph Velez

[REDACTED] LE

Ralph - Bajo Juramento

Ralph – Estas aqui para oir que nos puede decir de que se acuerda de un evento que ocurrio que se alega que un oficial de CBP alegadamente arrastro a un pasajero por las piernas y lo regreso a Mexico, en Enero 2, 2017, San Ysidro.

[REDACTED] **LE** De ese suceso, Bueno nosotros nos acercamos eramos hibamos unas companeras eras cinco en total nos acercamos al puerto de entrada de Otay Mesa en primer instancia a pedir ayuda por asilo politico. Por lo cual en la puerta de entrada de Otay Mesa el official no nos agredio solamente nos saco y nos dijo que nos direigieramos al Puerto de San Ysidro. Lo cual nosotros eso hicimos, estando en San Ysidro hicimos todo correctamente la linea como se tiene que hacer y al momento de pasar a el area donde se registra para entrar a los estados unidos yo doy frente mis companeros hiban atras de mi y yo platique con un agente, y dige que hibamos a pedir asilo.

Ralph – Mas despacio para captar toda su declaracion.

[REDACTED] **LE** Yo entregue mi pasaporte, al momento de darle mi pasaporte el official salio de su cubiculo donde esta su computadora, y se dirigio asia la entrada y nosotros no hablamos ingles pero nos hacia entender con las mamos a senas de que salieramos por donde habiamos regresado y que por ahi nos hiban a ayudar que habia una cabinita no recuerdo "grupo veta" creo que grupo veta nos hiba a ayudar entonces nosotros no decidimos salirnos una companera y mi persona comnsamos a caminar por el lado de la computadora pasamos la computadora porque yo sabia que por eso me hiban a arrestar. Osea se que es un error, que rompi una regla pero era la unica manera de que me arrestaran lo hize de una manera pacifica.

Ralph – Y usd lo hizo aproposito y porque usd hizo eso?

[REDACTED] **LE** En Primer instancia porque yo pedi una ayuda puerta de entrada por la cual no se me brindo que fue en la de Otay Mesa. Segunda instancia yo ya le habia pedido tambien al official pedirle una ayda al official el official queria sacarme y mandarme a el grupo veta. Que hace el grupo veta, deportar a personas a Mexico. Yo recorri Mexico por mucho tiempo fue un largo viaje para llegar a donde estaba lo

que yo llegaba a buscar no hera una ayda que no se me estaba brindando. Pues la instancia por que yo tome esta decision fue una decision muy acelerada pero lo hice pore so porque yo estaba buscando ayuda por la cuel no se me estaba brindando, fue por eso. Continueando, lo que sucedio al momento que yo hice eso una companera y mi persona traspasamos la computadora come le dije y los otros tres companeros se quedaron de lado de donde estabe nosotros nos traspasamos y los otros tres se quedaron de el otro lado. Cuando yo me traspase unos oficiales llegaron y nos agarraron y me arrinconaron en la pared, no puedo decir a certeza cuantos oficiales fueron pero si puedo decir que eran mas de tres o cuatro oficiales me arrinconaron contra la pared segun lo que yo recuerdo recuerdo que me agarraban del cuello lo que ellos querian hacer era sacarnos. A mi otra companera tambien le digeron que se saliera.

Ralph - Como se llama ella?

LE **LE** la que se habia metido con migo decidio salirse, se regreso para el lado de Mexico. Otra companera de los tres que estaban afuera **LE** estaba **LE** y estaba **LE** **LE** mi companera la sacaron a rastras de los pies.

Ralph - **LE** fue a la que sacaron.

LE Si correcto, **LE** se habia quedado con el grupo de lost res.

Ralph - Y usd precencio eso?

LE En el momento que me estaban agarrando a mi estaba biendo todo estaba biendo por todos lados y vi como mis companeros se salieron.

Ralph - Y usd vio cuando **LE** el official de CBP la arrastro?

LE La agarro de la pierna como para que se saliera ella no se queria salir.

Ralph - Usd presencio eso?

LE Si, osea si fue un momento muy rapido pero si.

Ralph - Ok, y que paso despues.

LE Bueno, a ellos los sacaron yo ya no supe que paso.

Ralph - Y usd que le paso con usd?

LE Con migo se quedaron los oficiales, ahi forsejando al final no me pudieron sacar y luego otro official y dijo que me hiban a arrestar que hera lo que yo queria y me arrestaron se fueron para Bueno me llevaron a un cuartito que estaba a la buelta y empesaron a revisar todas mis pertenencias me diejeron que me quitara mis anillos y mis aretes y me los quite y luego de eso empesaron a revisar mis pertenencias, yo soy una persona VIH positive yo utilize mis medicamentos yo llevaba mis medicamentos ese dia con mi personal lo que sucedio fue de que el official al ver mis medicamentos solo se les quedo viendo los agarro y se fue con un grupo de oficiales no se que les dijo no puedo decirles que fue lo que les dijo. Cuando regreso me pregunto que si yo estaba enfermo? Perdon, me dijo que si estaba enfermo y le dije que si. Y me dijo guarda tus perternencias, de ahi me llevaron a tomar fotografia. Luego me encerraron en un cuartito no se que me imagina que era de madrugada. Perdi la nocion del tiempo.

Ralph - Te voy a mostrar el video para que tu me expliques que fue lo que paso? Paso a paso? Para el record, estamos tratando de prender el video para que el **LE** lo pueda observar. Ahora, quiero que me diga cual es su parte aqui en este video y el grupo que me esta haciendo referencia? Esos son uds? Creo que eran cinco, unos dos tres. Esta personal es parte del grupo. Es usd?

LE Si so yo, lo que esta sucediendo es lo que yo le mencionaba desde el principio llegamos hicimos la linea correctamente al momento de que llego nuestro turno.

Ralph - Bienvenidos de Mexico?

LE Estabamos en Tijuana. Me parece si mas no recuerdo, que en esa computadora en una de las dos nos toco si fue en una computadora de este lado. El oficial llama, ella es **LE** Ahi estabamos el oficial me pidio los documentos le di mi pasaporte. Y le dije que pediamos asilo. El oficial toma mi pasaporte y me lo dio nos esta haciendo senales con la mano que vengamos y nos dirige hacia la salida. Que nos regresemos y que nos fueraoms para el grupo veta also asi le entendimos que el grupo veta nos va a ayuda, nosotros ya sabemos el grupo veta lo que hace es deportar a las personas. Entonces los otros tres companeros se quedaron ahi en lo que el oficial se movio a otra area yo y otra companera estephannie nos metimos y yo commence a caminar por este lado obviamente yo sabia que me iban a arrestar que me iban a detener y fue lo que paso. Ahi Bueno ahi me tenian a mi, fue un forcejeo, esa persona es estephannie.

Ralph - Quien es la que esta en el piso?

LE Ella es **LE** Casi no distingo todos andabamos ropa negra. Ese es el oficial, la iba arrastrando del pie, fue lo que vi fue algo muy rapido. Los oficiales me tenian arrinconado en la pared. **LE** se salio, estephannie tambien decidio salirse.

Ralph - Que mas me puede decir de ese suceso?

LE Que mas puedo decir, nunca pense que las cosas se fueran a dar como se dieron yo llegue buscando una ayuda y esperaba que me la brindaran esperaba un proceso correspondiente y correcto yo ya leido como es el proceso y yo me he metido en la pagina de inmigracion y habia leido que puedes pedir ayuda en una puerta de entrada ya sea por barco..yo esperaba que se hiciera pues las cosas no se dieron como you pensaba.

Ralph - Entonces como salio usd del Puerto de San Ysidro?

LE Yo nunca sali de ahi. Pase 14 dias encerrado en ese lugar. Luego me trasladaron al centro de detenciones en MCC. Y luego pase de esa fecha pase encerrado asta el 31 de julio fue que sali. Desde que sali me estube unos dias en casa de mis tios, y me mude aca el 28 de Agosto.

Ralph - Aguna otra cosa? Tiene algo que decir de el de la imagen/video? Cual fue el Puerto de entrada que usd utilize para buscar asilo?

LE El primer el de otay mesa, lo cual el oficial nos mando a San Ysidro. 5 personal **LE**
LE

Ralph - Que Asian en Mexico?

LE Nos conocimos en un albergue de mariposas que esta ahi en Mexico. Ahi nos conocimos ese dia yo dije que me iba a entregar, y ellos me acompañaron habiamos formado como una Amistad.

Ralph – Que les dijo usted a los oficiales de CBP cuando CBP se acercó a la inspección en primary?

LE Cuando me acerque a la computadora, que habiamos por asilo, que si nos podian ayudar me pregunto que si todos, le dije que si me pidio mis documentos le di mi pasaporte, lo que salio en el video salio que nos regresamos.

Ralph – Eran usted siguieron las instrucciones de CBP?

LE En mi caso no, yo iba con la intencion de que me arrestaran.

Ralph – Entonces usted da testimonio de que usted presenció hizo con **LE** fue la que se cayó al piso y el la arrastro.

LE Yo lo vi en una manera rapida, no como en el video yo vi cuando la iban sacando.

Ralph – Alguna otra cosa que usted quiera decir.

LE No tengo por el momento algo mas que agregar.

Ralph – Se siente usted intimidado, nos hemos portado con mucho respeto?

LE Al principio le marque a mi abogada, pero ella me dijo que no habia ningun problema.

Ralph – Esto concluye la declaración de el **LE** son las 10:23 am

O F F I C I A L U S E O N L Y
DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY

JUNE 7, 2018
201802466
EXHIBIT 5
SCBPO [REDACTED] email



DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY
O F F I C I A L U S E O N L Y

201802466

EXHIBIT 5

Confidential

AOL-DEF-00014064

3-SER-625

ANTUNEZ, YANINA (OPR)

From: ANTUNEZ, YANINA (OPR)
Sent: Thursday, June 7, 2018 4:44 PM
To: [REDACTED]
Subject: RE: 201802466

Thank you.

From: [REDACTED]
Sent: Friday, June 08, 2018 12:40:45 AM
To: ANTUNEZ, YANINA (OPR)
Subject: RE: 201802466

10/4, I'll take a look tomorrow.

From: ANTUNEZ, YANINA (OPR)
Sent: Thursday, June 07, 2018 4:04:29 PM
To: [REDACTED]
Subject: RE: 201802466

LE

Thank you so much,

Yanina

From: [REDACTED]
Sent: Thursday, June 07, 2018 11:25:37 PM
To: ANTUNEZ, YANINA (OPR)
Subject: RE: 201802466

Yanina,

We were never positive as to which person that arrived the following day was the one who was dragged. We have 2 possible.

LE

And

LE

Hope that helps!

From: ANTUNEZ, YANINA (OPR)
Sent: Thursday, June 07, 2018 11:48 AM
To: [REDACTED]
Subject: 201802466

Ms. [REDACTED]

Per our telephone conversation, below is my contact information. Thank you in advance.

(January 2, 2017, five transgender individuals who sought political asylum at the SY/POE)

Yanina

*Yanina Antunez
Senior Special Agent
U.S. Department of Homeland Security
U.S. Customs and Border Protection
Office of Professional Responsibility
610 W. Ash St., Suite 1600
San Diego, CA 92101*

[REDACTED]

CONFIDENTIALITY NOTICE/SENSITIVITY NOTICE: This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is law enforcement sensitive, proprietary, privileged, or confidential, and may be legally protected or otherwise exempt from disclosure. This message may be forwarded by the addressee, as appropriate, to further disseminate law enforcement sensitive information, as needed. If you have received this message in error, please notify the sender immediately by email and delete all copies of this message.

O F F I C I A L U S E O N L Y
DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY

JUNE 7, 2018

201802466

EXHIBIT 6

WC [REDACTED] video/audio recording



DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY
O F F I C I A L U S E O N L Y

201802466

EXHIBIT 6

Confidential

AOL-DEF-00014067

3-SER-628

O F F I C I A L U S E O N L Y
DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY

6-27-16 TO 12-7-17
201802466
EXHIBIT 7
Standard Operating Procedures
(Muster briefings)



DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY
O F F I C I A L U S E O N L Y

201802466

EXHIBIT 7

Confidential

AOL-DEF-00014068

3-SER-629



Customs and Border Protection
San Ysidro/Otay Mesa Ports of Entry
STANDARD OPERATING PROCEDURES



MUSTER

**TO: All Uniformed Personnel
San Ysidro/Otay Mesa**

**From: Port Director Aki
San Ysidro Port of Entry**

Due to the ongoing construction and infrastructure limitations at SYS/OTM port of entry; and to provide the most efficient processing of travelers, the following protocols will be adhered to:

Limit Line Personnel:

Under no circumstances will an asylum applicant be denied entry into the U.S. Please direct all applicants to the Pedestrian West (PedWest) facility for proper intake and processing.

Primary Personnel:

Any applicant for asylum encountered on primary (pedestrian/vehicle/CBX) should be taken into custody, escorted to the security office, and transported to the PedWest facility for proper intake and processing.

Your adherence to these procedures will ensure proper effectiveness of our duties and responsibilities. Thx.



**Customs and Border Protection
San Ysidro/Otay Mesa Ports of Entry
STANDARD OPERATING PROCEDURES**



MUSTER

**TO: All Uniformed Personnel
San Ysidro/Otay Mesa**

**From: Port Director Aki
San Ysidro Port of Entry**

Due to the ongoing construction and infrastructure limitations at SYS/OTM port of entry; and to provide the most efficient processing of travelers, the following protocols will be adhered to:

Limit Line Personnel:

Under no circumstances will an asylum applicant be denied entry into the U.S. Please direct all applicants to the Pedestrian West (PedWest) facility for proper intake and processing.

Primary Personnel:

Any applicant for asylum encountered on primary (pedestrian/vehicle/CBX) will be taken into custody, escorted to the security office, and transported to the PedWest facility for proper intake and processing.

PedWest:

All Mexican credible fear cases will proceed to primary for processing, under no circumstance will a Mexican credible fear case be returned to Mexico.

Your adherence to these procedures will ensure proper effectiveness of our duties and responsibilities. Please do not deviate from these procedures or misinform travelers applying for credible fear/asylum as it can result in a human rights violation and/or personal and agency liability.

ANTUNEZ, YANINA (OPR)

From: RODRIGUEZ, CARLOS C
Sent: Tuesday, November 15, 2016 8:26 PM
To: ^CBP_ALL SAN YSIDRO POE EMPLOYEES; ^CBP_ALL OTAY MESA POE EMPLOYEES
Subject: Limit Line Muster

Team,

Due to the ongoing construction and infrastructure limitations at SYS/OTM port of entry; and to provide the most efficient processing of travelers, the following protocols will be adhered to:

Limit Line Personnel:

Under no circumstances will an asylum applicant be denied entry into the U.S. Please direct all applicants to the Pedestrian West (PedWest) facility for proper intake and processing.

Primary Personnel:

Any applicant for asylum encountered on primary (pedestrian/vehicle/CBX) should be taken into custody, escorted to the security office, and transported to the PedWest facility for proper intake and processing.

Your adherence to these procedures will ensure proper effectiveness of our duties and responsibilities.

ANTUNEZ, YANINA (OPR)

From: HOOD, ROBERT W
Sent: Friday, April 14, 2017 2:35 PM
To: SYS-OTM-MNGR
Cc: HOOD, ROBERT W; AKI, SIDNEY K; CASTILLO, MOISES; MISENHELTER, JOSEPH;
RODRIGUEZ, CARLOS C
Subject: AEU Detention Space and Asylum Seekers
Importance: High

To ALL Managers,

Currently AEU has adequate detention space to process any applicant for asylum encountered at our facilities. Any asylum applicant we encounter should be taken into custody, escorted to the security office, and then transported to AEU for proper intake and processing. We should not be sending any asylum seekers back to Mexico. Please remind our officers.

Thank you,

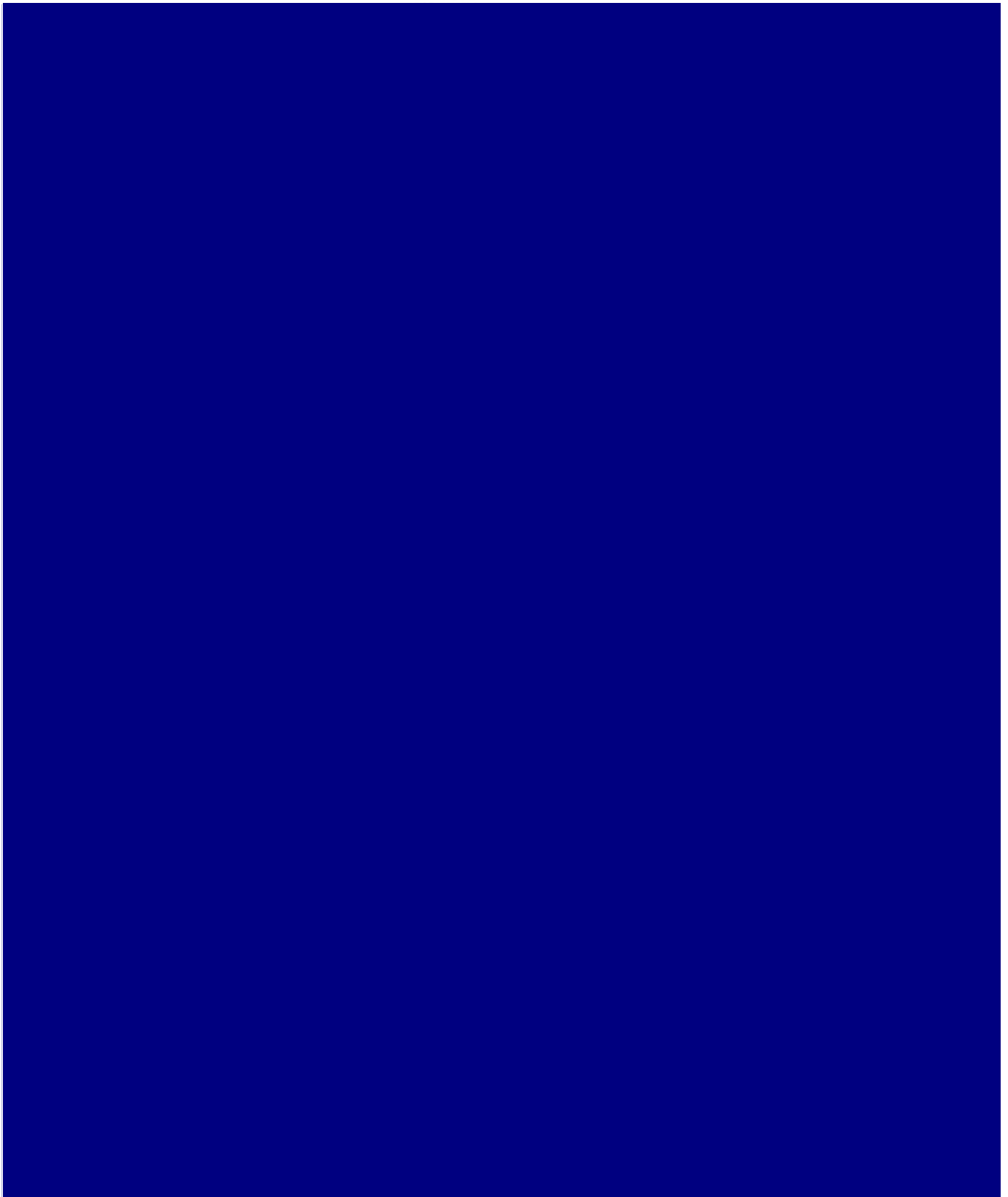
Robert Hood

Customs & Border Protection

Assistant Port Director

San Ysidro Tactical Operations





Confidential

AOL-DEF-00014073

O F F I C I A L U S E O N L Y
DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY

JUNE 7, 2018

201802466

EXHIBIT 8

BC [REDACTED] video/audio recording



DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY
O F F I C I A L U S E O N L Y

201802466

EXHIBIT 8

Confidential

AOL-DEF-00014074

3-SER-635

O F F I C I A L U S E O N L Y
DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY

JULY 20, 2018
201802466
EXHIBIT 9
CBPO [REDACTED] video/audio recording



DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY
O F F I C I A L U S E O N L Y

201802466

EXHIBIT 9

Confidential

AOL-DEF-00014075

3-SER-636

O F F I C I A L U S E O N L Y
DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY

JULY 20, 2018
201802466
EXHIBIT 10
CBPO [REDACTED] video/audio recording



DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY
O F F I C I A L U S E O N L Y

201802466

EXHIBIT 10

Confidential

AOL-DEF-00014076

3-SER-637

O F F I C I A L U S E O N L Y
DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY

JULY 24, 2018
201802466
EXHIBIT 11
CBPO [REDACTED] video/audio recording



DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF PROFESSIONAL RESPONSIBILITY
O F F I C I A L U S E O N L Y

201802466

EXHIBIT 11

Confidential

AOL-DEF-00014077

3-SER-638

1 MAYER BROWN LLP
Matthew H. Marmolejo (CA Bar No. 242964)
2 *mmarmolejo@mayerbrown.com*
350 S. Grand Avenue
3 25th Floor
Los Angeles, CA 90071-1503
4 Ori Lev (DC Bar No. 452565)
(*pro hac vice*)
5 *olev@mayerbrown.com*
Stephen M. Medlock (VA Bar No. 78819)
6 (*pro hac vice*)
smedlock@mayerbrown.com
7 1999 K Street, N.W.
Washington, D.C. 20006
8 Telephone: +1.202.263.3000
Facsimile: +1.202.263.3300
9

SOUTHERN POVERTY LAW CENTER
10 Melissa Crow (DC Bar No. 453487)
(*pro hac vice*)
11 *melissa.crow@splcenter.org*
1101 17th Street, N.W., Suite 705
12 Washington, D.C. 20036
Telephone: +1.202.355.4471
13 Facsimile: +1.404.221.5857

14 *Additional counsel listed on next page*
15 *Attorneys for Plaintiffs*

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 Al Otro Lado, Inc., *et al.*,

19 Plaintiffs,

20 v.

21 Chad F. Wolf,¹ *et al.*,

22 Defendants.
23
24

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 12 IN SUPPORT OF
PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF THEIR MOTION
FOR SUMMARY JUDGMENT**

FILED UNDER SEAL

25
26
27
28 ¹ Acting Secretary Wolf is automatically substituted for former Acting Secretary
McAleenan pursuant to Fed. R. Civ. P. 25(d).

1 CENTER FOR CONSTITUTIONAL RIGHTS

2 Baher Azmy (NY Bar No. 2860740) (*pro hac vice*)

3 *bazmy@ccrjustice.org*

4 Ghita Schwarz (NY Bar No. 3030087) (*pro hac vice*)

5 *gschwarz@ccrjustice.org*

6 Angelo Guisado (NY Bar No. 5182688) (*pro hac vice*)

7 *aguisado@ccrjustice.org*

8 666 Broadway, 7th Floor

9 New York, NY 10012

10 Telephone: +1.212.614.6464

11 Facsimile: +1.212.614.6499

12 SOUTHERN POVERTY LAW CENTER

13 Sarah Rich (GA Bar No. 281985) (*pro hac vice*)

14 *sarah.rich@splcenter.org*

15 Rebecca Cassler (MN Bar No. 0398309) (*pro hac vice*)

16 *rebecca.cassler@splcenter.org*

17 150 E. Ponce de Leon Ave., Suite 340

18 Decatur, GA 30030

19 Telephone: +1.404.521.6700

20 Facsimile: +1.404.221.5857

21 AMERICAN IMMIGRATION COUNCIL

22 Karolina Walters (DC Bar No. 1049113) (*pro hac vice*)

23 *kwalters@immcouncil.org*

24 1331 G St. NW, Suite 200

25 Washington, D.C. 20005

26 Telephone: +1.202.507.7523

27 Facsimile: +1.202.742.5619

28



UNHCR
United Nations High Commissioner for Refugees
Regional Representation in Washington

1800 Massachusetts Ave NW
Suite 500
Washington, DC 20036
Tel.: (202) 296.5191
Fax: (202) 296.5860
Email: cardoletti@unhcr.org

6 October 2016

René N. Hanna
Deputy Chief of Staff (Policy)
Office of the Commissioner
US Customs and Border Protection
1300 Pennsylvania Ave. NW, Ste. 4.4A
Washington, DC 20229

Re: UNHCR Site Visit to San Ysidro Port of Entry

Dear Ms. Hanna,

On behalf of the United Nations High Commissioner for Refugees (UNHCR), I wish to thank you and your staff for facilitating the site visit for me and my colleagues, Ms. Katie Tobin, Assistant Protection Officer, and Mr. Jose Sieber Luz, Senior Protection Officer (Mexico), at the San Ysidro port of entry during the week of 12 September 2016. The warm reception and thorough briefings received by my colleagues from Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) during the visit were very much appreciated.

We were particularly impressed to see the sincere efforts made by the various DHS counterparts at the border to ensure access to the United States protection for vulnerable persons despite ongoing capacity challenges and increasing numbers of arrivals.

Kindly find enclosed a short report reflecting UNHCR's findings and recommendations from the site visit. These recommendations aim not only to address the situation of Haitians arriving at the San Ysidro port of entry, but also ensure that access to asylum for all individuals seeking protection at the US border is preserved.

We are aware that following our site visit, there has been a change in the US policy on returns to Haiti. UNHCR advises careful consideration in the implementation of this new policy, particularly in light of current events affecting stability in the country, such as the National Elections and Hurricane Matthew.

We remain available, of course, to discuss any aspects of the report and look forward to continued collaboration on this situation and other issues of mutual concern.



Kind regards,

Chiara Cardoletti-Carroll
Deputy Regional Representative for
the USA & Caribbean

CC: Serena Hoy, Senior Counsel, Office of the Deputy Secretary, DHS
Jennifer Higgins, Deputy Chief of Staff, Office of the Deputy Secretary, DHS
J. Ryan Hutton, Deputy Executive Director, Admissibility and Passenger Programs, CBP Office of Field Operations, DHS

Confidential

AOL-DEF-00046740



UNHCR Findings and Recommendations
Site Visit to San Ysidro Port of Entry
12-14 September 2016

Background:

In recent months, the Office of the United Nations High Commissioner for Refugees (UNHCR) has been closely following the secondary movement of Haitians from Brazil to the United States and is aware that nearly 5000 have arrived at the San Ysidro port of entry since May 2016, disrupting business as usual for US Customs & Border Protection (CBP) and other sub-agencies within the Department of Homeland Security (DHS) processing cases there.

On the week of 12 September 2016, the Department of Homeland Security (DHS) Headquarters facilitated a site visit for UNHCR to observe CBP and ICE operations at San Ysidro to better understand the challenges created by the recent influx. In its advisory capacity, UNHCR agreed to provide confidential comments to DHS following the visit. Below is a summary of UNHCR's key findings and recommendations.

Findings:

- The number of Haitian nationals arriving at San Ysidro port of entry is on the rise. UNHCR witnessed large numbers being processed while visiting the port of entry on 13 September. According to CBP, most Haitian nationals seeking admission at the San Ysidro port of entry are not seeking asylum. While some may fear return to Haiti, CBP reports that the majority are not expressing fear at the port of entry. Instead, they are expressing interest in working and/or reuniting with family in the US. This was also confirmed by the anecdotal accounts of a group of Haitian nationals in CBP custody. A large majority of the Haitians are coming from Brazil. Many had children born there.
- When it comes to the magnitude of the phenomenon, UNHCR understands there is a significant backlog of Haitian cases at the Tijuana side of the border. Furthermore, the Mexican press reports that at least 950 Haitians requested appointments at the San Ysidro port of entry on 12 September alone. According to NGOs, Haitians have also been arriving in increasing numbers at other ports of entry in recent weeks, such as Calexico, which is far less resourced than San Ysidro. In addition to adult males, there is an increasing number of women and children making the journey. This flow is expected to continue in the coming months.
- According to CBP, some of the key reasons underlining this rise in movements are: 1) declining opportunities in Brazil following the end of the Olympics; 2) the recent extension of Temporary Protected Status (TPS) by the Secretary of DHS which has been interpreted by many Haitians (and smugglers) as a signal that the current favorable treatment of Haitians will continue.
- Both CBP and ICE in Southern California are currently doing what they can with existing resources to process the Haitians expeditiously and humanely and maintain regular

processing of asylum-seekers. The agencies have also developed strong partnerships with local NGOs to manage release and family reunification. Due to the influx of Haitians, CBP's asylum processing capacity has however been significantly limited in recent months. At least half of CBP's staffing and space previously dedicated to processing asylum-seekers is now being used to process Haitian parole cases. A multi-year construction project is further limiting CBP's asylum processing capacity.

- Haitians and non-Mexican asylum-seekers, including those from Central America, continue to be subject to a metering system in Tijuana. The Mexican authorities (INM) are currently running the metering system in collaboration with CBP to issue appointments to be processed at the port of entry. Appointment dates are distributed every Monday, Wednesday and Friday. According to CBP, the wait time for an appointment is currently between four days and one week. NGOs in Mexico report that the wait time is considerably higher, averaging between 20 and 25 days. The metering system was developed in an effort to better manage the influx at the port of entry. However, by increasing reception and processing capacity at the port of entry and streamlining procedures, such a metering system could be avoided. Needless to say, a system that limits and regulates access to a border is inherently problematic, as it is vulnerable to abuse and exploitation. Just this week, UNHCR received reports of Haitians selling their appointments for 500 USD.
- On the positive side, according to CBP, Mexican asylum-seekers are no longer subject to the metering system at San Ysidro. However, INM and Mexican NGOs both report that a ceiling of 50 Mexican asylum-seekers per day persists. Mexican asylum-seekers turned away at the port of entry on a given day are seeking to stay at the same four migrant shelters as the Haitians. Many are also resorting to sleeping on the streets of Tijuana.
- Tijuana and San Diego are currently overwhelmed with the number of Haitians arriving and seeking shelter. In recent weeks, there has been increasing media coverage of what is being labeled a "humanitarian crisis." Images and stories of long lines in Tijuana featured prominently in the Mexican press this week. This vulnerable population requires urgent attention.

Recommendations:

- Recognize the Haitian situation at San Ysidro as a surge and activate existing protocols for mass migration processing. To this end, UNHCR recommends that DHS open as a pilot project a temporary central processing center near the San Ysidro port of entry to offer reception and process Haitian parole claims. This is something that CBP is already positively considering following discussions with them at the border.
- Re-evaluate current protocols and streamline parole processing at the port of entry to significantly reduce the processing time for Haitian parolees and look for opportunities to curtail the process and omit any duplicative steps taken by CBP and ICE in light of the rising numbers.

- Urgently reconsider the use of a metering system (appointment system) for asylum-seekers and other vulnerable populations approaching the port of entry. This recommendation goes hand-in-hand with the recommendation for a central processing center.
- Invest in shelter capacity and other humanitarian aid in Tijuana and San Diego for the Haitian population. Take proactive steps to meet the needs of this vulnerable population.

UNHCR Regional Office Washington
6 October 2016

1 MAYER BROWN LLP
Matthew H. Marmolejo (CA Bar No. 242964)
2 *mmarmolejo@mayerbrown.com*
350 S. Grand Avenue
3 25th Floor
Los Angeles, CA 90071-1503
4 Ori Lev (DC Bar No. 452565)
(*pro hac vice*)
5 *olev@mayerbrown.com*
Stephen M. Medlock (VA Bar No. 78819)
6 (*pro hac vice*)
smedlock@mayerbrown.com
7 1999 K Street, N.W.
Washington, D.C. 20006
8 Telephone: +1.202.263.3000
Facsimile: +1.202.263.3300
9

SOUTHERN POVERTY LAW CENTER
10 Melissa Crow (DC Bar No. 453487)
(*pro hac vice*)
11 *melissa.crow@splcenter.org*
1101 17th Street, N.W., Suite 705
12 Washington, D.C. 20036
Telephone: +1.202.355.4471
13 Facsimile: +1.404.221.5857

14 *Additional counsel listed on next page*
15 *Attorneys for Plaintiffs*

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 Al Otro Lado, Inc., *et al.*,

19 Plaintiffs,

20 v.

21 Chad F. Wolf,¹ *et al.*,

22 Defendants.
23
24
25
26
27

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 14 IN SUPPORT OF
PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF THEIR MOTION
FOR SUMMARY JUDGMENT**

FILED UNDER SEAL

28 ¹ Acting Secretary Wolf is automatically substituted for former Acting Secretary
McAleenan pursuant to Fed. R. Civ. P. 25(d).

1 CENTER FOR CONSTITUTIONAL RIGHTS

2 Baher Azmy (NY Bar No. 2860740) (*pro hac vice*)

3 *bazmy@ccrjustice.org*

4 Ghita Schwarz (NY Bar No. 3030087) (*pro hac vice*)

5 *gschwarz@ccrjustice.org*

6 Angelo Guisado (NY Bar No. 5182688) (*pro hac vice*)

7 *aguisado@ccrjustice.org*

8 666 Broadway, 7th Floor

9 New York, NY 10012

10 Telephone: +1.212.614.6464

11 Facsimile: +1.212.614.6499

12 SOUTHERN POVERTY LAW CENTER

13 Sarah Rich (GA Bar No. 281985) (*pro hac vice*)

14 *sarah.rich@splcenter.org*

15 Rebecca Cassler (MN Bar No. 0398309) (*pro hac vice*)

16 *rebecca.cassler@splcenter.org*

17 150 E. Ponce de Leon Ave., Suite 340

18 Decatur, GA 30030

19 Telephone: +1.404.521.6700

20 Facsimile: +1.404.221.5857

21 AMERICAN IMMIGRATION COUNCIL

22 Karolina Walters (DC Bar No. 1049113) (*pro hac vice*)

23 *kwalters@immcouncil.org*

24 1331 G St. NW, Suite 200

25 Washington, D.C. 20005

26 Telephone: +1.202.507.7523

27 Facsimile: +1.202.742.5619

28

AL OTRO LADO, INC., ET
AL.,
PLAINTIFFS,

VS.

KEVIN K. MCALEENAN, ET
AL.,
DEFENDANTS.

ORAL AND VIDEOTAPED DEPOSITION OF
RODNEY HARRIS
JUNE 2, 2020

ORAL AND VIDEOTAPED DEPOSITION of RODNEY HARRIS,
produced as a witness at the instance of the Plaintiff,
and duly sworn, was taken in the above-styled and
numbered cause on June 2, 2020, from 10:23 a.m. to 6:27
p.m., before Delia Ordonez, CSR in and for the State of
Texas, reported by machine shorthand, via Webex Magna
LegalVision.

Magna Legal Services
866.624.6221
www.MagnaLS.com



1 A P P E A R A N C E S
2 FOR THE PLAINTIFFS:
3 Rebecca Cassler
4 Sara Rich
5 Southern Poverty Law Center
6 1101 17th Street, N.W., Suite 705
7 Washington, D.C. 20036
8 202.355.4471
9 Rebecca.cassler@splcenter.org
10 Sara.rich@splcenter.org
11
12 Allison Parr
13 Steve Medlock
14 Mayer Brown
15 1999 K Street, N.W.
16 Washington, D.C. 20006
17 202.263.3221
18 AWParr@mayerbrown.com
19
20 FOR THE DEFENDANTS:
21
22 Ari Nazarov
23 Dhruman Y. Sampat
24 U.S. Department of Justice
25 Office of Immigration Litigation
 P.O. Box 868, Ben Franklin Station
 Washington, D.C. 20044
 202.598.8259
 Ari.Nazarov@usdoj.gov
 Dhruman.y.sampat@usdoj.gov
 ALSO PRESENT:
 Louisa Slocum, CBP
 Benjamin Wolarsky
 THE VIDEOGRAPHER:
 Noah Fox
 THE MAGNA LEGAL TECHNICIAN:
 Kevin Cranford

1	INDEX	
	ORAL AND VIDEOTAPED DEPOSITION OF	
2	RODNEY HARRIS	
	JUNE 2, 2020	
3		
4	E X A M I N A T I O N	
5	RODNEY HARRIS	P A G E
6	By Ms. Rebecca Cassler.....	6
7	By Ms. Allison Parr.....	236
8	By Mr. Ari Nazarov.....	286
9	FURTHER EXAMINATION	
10	By Ms. Rebecca Cassler.....	291
11		
12	Signature and Changes.....	294
13	Reporter's Certificate.....	296
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 A. Yes.

2 Q. -- was "yes"?

3 Okay. And then that list keeper will
4 provide the port information about who's next on the
5 list, right?

6 A. Not necessarily. In -- in -- that, again,
7 could vary by port. In some ports, yes, and other
8 ports, you know, they might just send the number that
9 the port requested to the bridge.

10 Q. Okay. And when the list is kept by INM, then
11 INM and CBP coordinate to ensure that those migrants are
12 dropped off at a specified place and time, right?

13 A. That's a fair statement.

14 Q. Okay. And when the list keeper is a shelter or
15 shelter staff, then the shelter and INM and CBP might
16 all communicate to arrange that processing, right?

17 A. Yes, that's fair as well.

18 Q. Okay.

19 A. And I -- can I throw one more potential
20 situation at you?

21 Q. Please do.

22 A. Okay. So the only -- I -- I thought of
23 a -- kind of -- it's a smaller port, but there is --
24 at -- at a point in time in Del Rio, there was a migrant
25 camp fairly close to the border on the -- on the Mexican

1 side, and that particular camp kept their own list. So
2 I don't know if you would consider that a shelter in
3 some respects, but we -- we always referred to it as a
4 migrant camp. But they would keep -- they would keep
5 their own -- own list at that -- at that particular
6 place.

7 Q. All right. So then, there was a point of
8 contact at the migrant camp who would communicate with
9 CBP on the U.S. side about arranging for processing?

10 A. No. I believe they would still go through INM
11 and ask for the -- you know, the number of persons for
12 processing. INM would then liaise with the -- the
13 migrant camp and --

14 Q. Okay.

15 A. -- escort over to CBP.

16 Q. That makes -- thanks for clarifying.

17 You used one acronym, AOR. What does that
18 mean?

19 A. Area of responsibility.

20 Q. Thanks. All right. Let's talk a little bit
21 about capacity.

22 So there's no one at CBP who's tasked with
23 calculating operational capacity of a port of entry,
24 right?

25 MR. NAZAROV: Objection, form.

1 A. What I -- the question I heard was: There's no
2 one at CBP who's tasked with calculating operational
3 capacity?

4 Q. (BY MS. CASSLER) Yeah, for a -- for a given
5 port of entry.

6 A. Yeah. No, that's -- we never -- we've never
7 had a calculation for an -- an operational capacity.

8 Q. Okay. Do ports report up to headquarters or at
9 least up to LFO management how many asylum seekers they
10 decided to process on any given day?

11 A. As a matter of business? As a course of
12 business every day? No.

13 Q. Okay. Do they do it sometimes?

14 A. No. That's the port director's day-to-day
15 business that he's managing. There wouldn't be any
16 reason to report that to the LFO unless there was
17 some -- some anomaly, some issue, something happened
18 during the, you know, during the processing, something
19 out of the ordinary. But that's just -- you know,
20 processing X number of persons in a day is not something
21 we'd be -- that would be reported up.

22 Q. Okay. So we just talked about the wait list
23 process in general terms. When did ports and LFOs start
24 using that wait list process?

25 MR. NAZAROV: Objection, form.

1 A. Okay. So to, you know, reiterate, ports and
2 the LFO don't maintain a wait list. We don't use a wait
3 list to determine who we process. We liaise with an
4 entity in -- in Mexico, you know, and ask for a certain
5 number of persons --

6 Q. (BY MS. CASSLER) Yeah.

7 A. -- a day, and then they, you know, send us
8 people that are presumably on the -- on the --

9 Q. Yeah.

10 A. -- wait list.

11 Q. So that process you just described, when did --

12 A. Right.

13 Q. -- that start happening?

14 A. Okay. So that would have started to happen, as
15 I mentioned earlier -- give me just one second to
16 silence this phone, please.

17 MS. CASSLER: Oh, no problem.

18 THE WITNESS: It's my office phone. Sorry
19 about that.

20 MS. CASSLER: That's okay.

21 A. So I mentioned earlier that after June 2018,
22 when we were doing our queue management at the middle of
23 the bridge, some of the larger ports started seeing
24 larger numbers of people waiting on the bridge on the
25 Mexican side. So as the Government of Mexico elected to

1 not allow these people to wait on the bridge any longer,
2 then that's when that communication would have started
3 to occur.

4 Q. (BY MS. CASSLER) How did CBP even know that
5 there were waiting lists?

6 A. So that would have -- the day-to-day business
7 conversations with our Mexican counterparts.

8 Q. Yeah. I mean, that makes sense.

9 And at this point, for the ports that have
10 wait lists, the process is, more or less, similar across
11 the ports, right, in terms of how the wait list works?
12 Like, you talk to INM, you give them a number, and then
13 processing happens; is that right?

14 MR. NAZAROV: Objection, form.

15 A. It's -- it's similar, not -- not -- it -- it's
16 going to vary at every port to a certain extent, but in
17 overall, high-level terms, yes. We request a certain --

18 Q. (BY MS. CASSLER) Yeah.

19 A. -- number of persons either that day, or I
20 think in the case of Hidalgo, they actually request
21 the -- the evening before, late, for the next morning.
22 And, yes, the next morning the -- the migrants will be
23 escorted to the middle of the bridge by INM in most
24 cases.

25 Q. So that policy -- or -- sorry -- that -- that

1 practice that you just described, was that ever
2 mustered?

3 A. That is -- that practice is not -- is not our
4 policy. It's not something that we have control over.
5 So we've never put out any sort of a muster telling
6 people this is how the process you've described is
7 go- -- is going to work. That's something that would be
8 managed at the -- the local level.

9 Q. Okay. But all the ports seem to kind of do a
10 similar thing. We -- we already talked about that,
11 right?

12 MR. NAZAROV: Objection, form.

13 A. Yes, it's similar, and it's -- and what --
14 what's happening in the current state, you know,
15 developed over time.

16 Q. (BY MS. CASSLER) Uh-huh.

17 A. But it was not --

18 Q. Was there information sharing between ports
19 about best practices on this issue?

20 MR. NAZAROV: Objection, form.

21 A. I would presume so. Our ports are encouraged,
22 you know, to share information about best practices,
23 whether it be, you know, processing migrants or, you
24 know, narcotics enforcement. Whatever the mission set
25 is, they're going to share information and best

1 capacity of the detention cells that would typically be
2 used during the -- the processing of migrants.

3 Q. Okay. Yeah. And that's often referred to as
4 detention capacity too, right?

5 A. Yeah, that would be the detention capacity,
6 yes.

7 Q. Okay. Is that number -- like, is it from,
8 like, a building code, or where did the -- the -- the
9 number for how many people can be hold in a cell come
10 from?

11 A. Every -- every cell is going to be rated at a
12 maximum capacity.

13 Q. Uh-huh.

14 A. That's not saying that we're always able to use
15 it at that maximum --

16 Q. Right.

17 A. -- capacity --

18 Q. Right, right, right.

19 A. -- but it's -- it -- it would be based on some
20 formula from -- from GSA, yes, with taking into account
21 the fire codes and -- and whatnot. What exactly that
22 formula is, I don't know. But when they -- you know,
23 when they build a building and there's a detention cell
24 there, it's going to be rated for --

25 Q. Uh-huh.

1 A. -- maximum number of people as -- at a
2 maximum --

3 Q. Okay.

4 A. -- capacity.

5 Q. So it's a DSA number. That's helpful.

6 A. I would presume. So I don't have -- I've never
7 seen anything that actually says that, but, I mean,
8 your -- your capacity of any building is going to be,
9 you know, based on those construction formulas, as far
10 as I'm aware.

11 Q. Okay. Has the detention capacity at any of the
12 LFO ports changed since 2016?

13 A. Yes.

14 Q. Let just start with the first one in your head
15 and go through and, like, talk about all the changes.

16 So what's one example of a change in
17 detention capacity at LFO?

18 A. Probably the biggest would be the Port of
19 Laredo.

20 Q. How did that change?

21 A. So in Laredo, the two main passenger processing
22 facilities are bridges, Bridge 1, Bridge 2. Gateway to
23 the Americas or Juárez-Lincoln/Lincoln-Juárez have both
24 undergone major reconstruction since 2016 that began in,
25 I believe, the summer of 2016. One bridge was completed

1 in April of 2018. The second bridge was completed in
2 January of 2019, I believe. I'm sorry. It's escaping
3 me right now which bridge was the completed construction
4 at first --

5 Q. That's okay.

6 A. -- but, you know, during the course of that
7 time, the -- the detention capacity, the holding
8 capacity was changing on a fairly regular basis.

9 Q. So --

10 A. The buildings were completely -- Bridge 1 was
11 completely gutted and renovated on the inside. The
12 outside didn't change. But the facility at Bridge 2,
13 that was razed completely and rebuilt, so it's --

14 Q. Oh, wow.

15 A. -- a complete change.

16 Q. So setting aside the construction period, like,
17 I know they're -- things were probably changing during
18 construction, but comparing before construction and
19 after construction, did the detention capacity go up or
20 down at those ports?

21 A. At the Port of Laredo, it -- it went up, I
22 believe.

23 Q. Okay. Do you know how much?

24 A. I think we were reporting 90 prior, at the very
25 beginning of that period, and now we should be reporting

1 around 125.

2 Q. Okay. Other than Laredo, what other changes to
3 detention capacity have occurred since 2016?

4 A. So there were some changes at the very
5 beginning at really all the ports. We lowered
6 the -- the detention capacity or the holding capacity
7 once we had kind of a better understanding of what we
8 were really being asked to report on, some of the
9 initial reports.

10 And we included, you know, our -- the --
11 the entirety of our holding cell footprint, regardless
12 of whether the cell was in an area that was usable to
13 actually detain people, whether it was in a facility
14 that would process migrants or not, you know, example
15 being the cargo lots, an airport, a railroad. Over
16 time, we started -- we removed those from the capacity
17 reports because they weren't --

18 Q. When was --

19 A. -- our understanding, they weren't really
20 relevant to the question that was being asked, which was
21 "What is your detention, your holding capacity, at the
22 places where you can process migrants?"

23 Q. When would those have been removed from the
24 detention capacity numbers, roughly?

25 A. Yeah. I'm trying to think. I can't recall

1 the -- the dates.

2 Q. Was it after --

3 A. I can't recall --

4 Q. -- these records started being created?

5 A. I'm sorry?

6 Q. I didn't mean to talk over you. What were you
7 saying?

8 A. I'm saying I can't recall the exact date.

9 I -- I'm sorry.

10 Q. Oh, that's fine. I was asking: Was -- was it
11 after they started requiring this specific report?

12 A. Yes, I believe so. But when you say "this
13 specific report," I would say some version of this
14 report because this report has also changed over time.

15 Q. Okay. Did this -- sorry if I already asked
16 this. This queue management report started being
17 required around June 2018; is that right?

18 A. June 2018?

19 Q. Uh-huh.

20 A. That sounds about right.

21 Q. Okay.

22 A. I don't remember the exact date, but that
23 sounds about right.

24 Q. Okay. So the major changes to detention
25 capacity at LFO ports are -- one, there was construction

1 at Laredo, and both bridges had their facilities majorly
2 upgraded. And other than that, there were changes
3 showing up -- we -- we should expect to see changes
4 showing up in the data based on some detention capacity
5 being removed from the data; is that right?

6 A. Yes.

7 Q. Yeah. Okay.

8 A. Well, our -- like I said, our interpretation of
9 what they were -- what was actually being asked of us.
10 We used to have, you know, some facilities that may have
11 a holding cell there, but they would never be used to
12 actually, you know, hold a migrant.

13 Q. Why not?

14 A. Because of their location. I've got -- you
15 know, going back to Laredo for an example, they have a
16 holding cell at -- I believe they have a holding cell
17 still at -- at the railroad. There's holding cells at
18 our airports and some of the other, you know, cargo
19 lots. Well, all of the cargo lots, you're going to have
20 cells, but you're not going to hold a migrant at a cargo
21 lot.

22 We have facilities that are only open part
23 of the day. They may have a holding cell, which
24 would -- you know, could be included in your number of
25 hold ing cells that a -- you know, a field office report

1 has, but a migrant's not going to be held there. It's
2 just not operational --

3 Q. And so -- oh, go ahead.

4 A. No, I'm just saying it's not operationally
5 feasible to hold a migrant in a lot of these locations.

6 Q. The cells at cargo lots specifically, are those
7 designed to hold people?

8 A. Yes.

9 Q. Okay. Let's look back at this exhibit. So
10 the -- the column -- it's -- one, two -- it's the fifth
11 column, "Number and Queue at Boundary Line." That
12 refers to the number of asylum seekers, or, I guess, to
13 use your term, migrants, physically waiting on the
14 bridge on the Mexico side to be processed that day,
15 right?

16 A. That's how I understand the column, yes.

17 Q. Who collected that data?

18 A. I'm sorry?

19 Q. Who would have collected that data?

20 A. So the ports of entry, all the ports of entry
21 are going to send that data to the Laredo Operations
22 Center every morning, and then we'll compile it --

23 Q. Uh-huh.

24 A. -- send it to OFO.

25 Q. Okay. And the "Impact to Port Operations"

1 when did CBP start using the term "operational capacity"
2 in relation to queue management?

3 A. I would say, from what I recall, maybe as early
4 as June 2018, but I don't have anything that says, you
5 know, "On this date we started using operational
6 capacity," so that's -- that's my recollection.

7 Q. Okay. So it was some -- probably sometime
8 around June 2018, right?

9 A. June 2018?

10 Q. Yeah.

11 A. That -- that's -- that's my best estimation,
12 yes.

13 Q. Let's look at Exhibit 233. And I'll just read
14 into the record what it is. It's -- so what will be
15 marked as Exhibit 233 is a one-page e-mail with Bates
16 No. AOL-DEF-00911232.

17 Do you see that e-mail on the screen?

18 A. Yes.

19 MS. CASSLER: And Ms. Rich sent it to the
20 government, I'm assuming.

21 MR. NAZAROV: Yeah, we're waiting.

22 But, Mr. Harris, can you see this okay?

23 THE WITNESS: Yes, I can.

24 MR. NAZAROV: Okay. You can go ahead,
25 Rebecca.

1 MS. CASSLER: Cool.

2 Q. (BY MS. CASSLER) So this is an e-mail chain
3 with the top e-mail, so the most recent, an -- it's an
4 e-mail from Frank Longoria to Bradd Skinner, dated
5 June 13th, 2018. Do you see that?

6 A. Yes.

7 Q. And Mr. Longoria -- we've talked about through
8 there. Okay. Yeah.

9 So this e-mail is a cover e-mail for
10 sending a draft queue management plan for Laredo, right?

11 A. That would -- you know, without the attachment,
12 that would appear to be the case. Yes, this --

13 Q. Uh-huh. Uh-huh.

14 A. -- seems to pertain to that.

15 Q. So the Laredo Field Office created a queue
16 management plan, right?

17 A. Yes.

18 Q. Yeah. And that was in early 2018; is that
19 correct?

20 A. In early 2018? Well --

21 Q. Or in June 2018. I'm sorry.

22 A. Yeah, mid-2018, so June 2018.

23 Q. Great. So could you please read out the second
24 line in this e-mail from Frank Longoria?

25 A. "Do we need to revisit since we have moved from

1 'detention capacity' to 'operational capacity'?"

2 Q. So that's consistent with your thought that
3 operational capacity was a term that CBP started using
4 in June 2018, right?

5 A. From what I remember, yes. That appears to be
6 the case.

7 Q. Uh-huh. Uh-huh. Then could you read the next
8 two sentences?

9 A. "Recommend we send to the ports for their
10 review and comment before we go final. This way we can
11 have port directors tell us what 'operational capacity'
12 means to them. What say you?"

13 Q. Uh-huh. So I read this e-mail, and I think
14 Frank Longoria and Bradd Skinner don't know what
15 operational capacity means. Is that --

16 MR. NAZAROV: Objection, form.

17 Q. (BY MS. CASSLER) -- how you read it?

18 MR. NAZAROV: Objection, form.

19 A. Okay. No. The way I read it is there's not a
20 definition of operational capacity that we were giving,
21 so it would be up to interpretation. So they wanted to
22 hear what the port directors think it means. Well,
23 Mr. Longoria --

24 Q. (BY MS. CASSLER) Okay.

25 A. -- wants to hear what the port directors think

1 it means -- thinks it means.

2 Q. Okay.

3 A. That's how I would interpret it.

4 MS. CASSLER: Okay. We can -- okay. We
5 can put that away.

6 Q. (BY MS. CASSLER) Since queue management
7 started, ports in LFO have metered asylum seekers after
8 they cross onto U.S. soil, right?

9 MR. NAZAROV: Objection, form.

10 A. They have not --

11 Q. (BY MS. CASSLER) What did you say?

12 A. Talk -- talking to me or to the attorney?

13 Q. To you, Mr. Harris. I couldn't hear --

14 A. Okay. Yeah.

15 Q. -- what you said.

16 A. So, yeah. No, that has happened in very
17 limited circumstances. It -- it's -- you know, and we
18 were made aware of the situation, corrective actions
19 were taken. It was, of course, in accordance with our
20 policy or the EEC's guidance.

21 Q. Okay. So you don't --

22 A. I can't say that it hasn't happened. It just
23 hasn't happened on a wide scale. It's been very
24 limited --

25 Q. Uh-huh.

1 A. -- circumstances or incidents that I'm aware
2 of.

3 Q. Okay. So you don't deny that it happened,
4 right?

5 A. No, I don't, in very, very limited
6 circumstances and specific incidents.

7 Q. Did it happen at multiple ports of entry?

8 A. I'm sorry?

9 Q. Did it happen at more than one port of entry?

10 A. Yes.

11 Q. Which ports of entry did it happen at?

12 A. So I'm aware of Eagle Pass and Laredo. They
13 both had incidents of what you're describing.

14 Q. Okay.

15 A. And it said metered after crossing into the
16 U.S., so I'm presuming that means we actually sent
17 someone back to Mexico. Is that what you're
18 insinuating? Okay.

19 Q. Yeah.

20 A. Yes.

21 Q. Yeah. So you're aware of Eagle Pass and
22 Laredo?

23 A. Yes.

24 Q. Is it possible that it happened at other ports
25 and you're not aware of it?

1 MR. NAZAROV: Objection, form.

2 A. I suppose it's possible.

3 Q. (BY MS. CASSLER) Let's look at Exhibit 243.

4 I'll just read what that is. I'm showing you what will
5 be marked as Exhibit 243. It's a two-page e-mail with
6 Bates numbers starting at AOL-DEF-00909668.

7 Can you see that e-mail?

8 A. Yes. It's a little fuzzy, but I can see it.

9 Q. Okay. Yeah. This one's hard to read.

10 MS. CASSLER: Ari, have you gotten it? Are
11 you okay with going --

12 MR. NAZAROV: We have not. We have not.

13 Mr. Harris, has it become less fuzzy since
14 Kevin kind of blew it up?

15 THE WITNESS: It's not as sharp as
16 the -- the other exhibits, but it -- it's -- it's
17 legible. It's...

18 MR. NAZAROV: You're able to read it?

19 THE WITNESS: Yeah. I'm trying to read it
20 now.

21 MR. NAZAROV: Okay.

22 MS. CASSLER: Okay.

23 Q. (BY MS. CASSLER) So let's go to --

24 MR. NAZAROV: Are you --

25 Q. (BY MS. CASSLER) -- the second --

1 manage more effectively, you know, our intake at the
2 ports --

3 Q. (BY MS. CASSLER) Uh-huh.

4 A. -- not just to keep them out indefinitely.

5 Q. But there's no promises that anybody who's
6 metered at the limit line is going to make it onto the
7 list and eventually be processed, is there?

8 MR. NAZAROV: Objection, form.

9 A. So I think you're kind of complaining (sic) a
10 couple of different things there that I don't, you know,
11 see the relationship there between seeing how the limit
12 line you know, told you, you have to wait and then
13 making it on the -- you know, the list that's not
14 managed by us. I don't see those as one issue, you
15 know, bleeding into the other.

16 Q. (BY MS. CASSLER) Okay. So after a person is
17 not permitted to cross into the United States at the
18 limit line, it's not CBP's problem anymore, is it?

19 MR. NAZAROV: Objection, form.

20 A. So say -- say that one more time, please.

21 Q. (BY MS. CASSLER) I mean, you just testified
22 that there's no link between a person being turned away
23 at the limit line and their sitting on the list in order
24 to be processed; is that right?

25 MR. NAZAROV: Objection, form.

1 A. Yeah. CBP doesn't maintain that list or, you
2 know, have any say-so on who gets on it or -- or -- or
3 what. So I don't see the --

4 Q. (BY MS. CASSLER) Uh-huh.

5 A. -- I don't see the applicability of what
6 you're -- you're saying there.

7 Q. Okay. So the purpose of the limit line
8 position, just to be clear, is to prevent people from
9 crossing the international boundary, right?

10 A. Well, the purpose of that queue management
11 position or limit line position, using interchange areas
12 to keep migrants from crossing the international
13 boundary and overwhelming our ports of entry, and, you
14 know, allowing us to maintain a safe and orderly process
15 for the people we already have in custody, allowing us
16 to use our resources effectively and efficiently.

17 Q. But as long as somebody stays on the U- -- on
18 the Mexico side of that international boundary, CBP's
19 view is there's no duty to process them, right?

20 MR. NAZAROV: Objection, form.

21 A. As long as the person is on -- in Mexico, which
22 being on the Mexican side of the international boundary
23 line, they would be in Mexico, then, yes, we don't see
24 it as our mandate to -- to process them nor could we.

25 Q. (BY MS. CASSLER) There's no guarantee that an

1 asylum seeker or migrant who's prevented from crossing
2 the limit line when they first approach will ever be
3 allowed into the United States, is there?

4 MR. NAZAROV: Objection, form.

5 A. Guarantee? So that implies some sort of
6 something from us. So, no. They're told that, you
7 know, if someone is -- is metered, if they are prevented
8 from crossing the limit line at any particular time,
9 they're told that, "The port is at -- you know, at
10 current capacity. We can't take you in right now for
11 processing. You're going to have to, you know, wait in
12 Mexico."

13 Now, no, there's no guarantee implied or
14 has ever been implied. I'm not sure what sort
15 of -- what sort of guarantee we would -- so, no. The
16 answer to your question is: No, there's no guarantee,
17 but I'm really not sure where you are. We don't give a
18 person anything saying at some point in the future, you
19 might be processed here. That's the way I interpret
20 you're using "guarantee."

21 Q. (BY MS. CASSLER) If a person, a migrant, were
22 allowed to cross the limit line, then they would be
23 guaranteed inspection and processing, right?

24 A. I'm interpreting guarantee as we are going to
25 take them in, inspect them, and process them, yes.

1 So...

2 Q. I -- I think I'm using guarantee in the sense
3 of we can say we -- it's going to happen.

4 MR. NAZAROV: Objection, form.

5 Q. (BY MS. CASSLER) Does that make sense to you?

6 A. Yeah, that makes sense. I'm sorry. It's the
7 same answer. If a person comes into the United States
8 and at that point makes a claim of a fear, they ask for
9 asylum, whatever the case is, then, yes, they would be
10 processed appropriately.

11 MS. CASSLER: I think we can stop there.
12 And my colleague, Allison Parr, has questions about
13 Topic 15, so I'm going to mute, and Allison will take
14 over.

15 MS. PARR: Thank you, Becky.

16 EXAMINATION

17 BY MS. PARR:

18 Q. Good afternoon, Mr. Harris. My name is Allison
19 Parr, and I also represent Plaintiffs in this case.

20 You testified at the beginning of your
21 deposition that you were designated as the CBP
22 representative to speak to Topic 15 today, correct?

23 A. Yes.

24 Q. I apologize.

25 MS. PARR: Is my video working?

1 MAYER BROWN LLP
Matthew H. Marmolejo (CA Bar No. 242964)
2 *mmarmolejo@mayerbrown.com*
350 S. Grand Avenue
3 25th Floor
Los Angeles, CA 90071-1503
4 Ori Lev (DC Bar No. 452565)
(*pro hac vice*)
5 *olev@mayerbrown.com*
Stephen M. Medlock (VA Bar No. 78819)
6 (*pro hac vice*)
smedlock@mayerbrown.com
7 1999 K Street, N.W.
Washington, D.C. 20006
8 Telephone: +1.202.263.3000
Facsimile: +1.202.263.3300
9

SOUTHERN POVERTY LAW CENTER
10 Melissa Crow (DC Bar No. 453487)
(*pro hac vice*)
11 *melissa.crow@splcenter.org*
1101 17th Street, N.W., Suite 705
12 Washington, D.C. 20036
Telephone: +1.202.355.4471
13 Facsimile: +1.404.221.5857

14 *Additional counsel listed on next page*
15 *Attorneys for Plaintiffs*

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 Al Otro Lado, Inc., *et al.*,

19 Plaintiffs,

20 v.

21 Chad F. Wolf,¹ *et al.*,

22 Defendants.
23
24

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 15 IN SUPPORT OF
PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF THEIR MOTION
FOR SUMMARY JUDGMENT**

FILED UNDER SEAL

25
26
27
28 ¹ Acting Secretary Wolf is automatically substituted for former Acting Secretary
McAleenan pursuant to Fed. R. Civ. P. 25(d).

1 CENTER FOR CONSTITUTIONAL RIGHTS

2 Baher Azmy (NY Bar No. 2860740) (*pro hac vice*)

3 *bazmy@ccrjustice.org*

4 Ghita Schwarz (NY Bar No. 3030087) (*pro hac vice*)

5 *gschwarz@ccrjustice.org*

6 Angelo Guisado (NY Bar No. 5182688) (*pro hac vice*)

7 *aguisado@ccrjustice.org*

8 666 Broadway, 7th Floor

9 New York, NY 10012

10 Telephone: +1.212.614.6464

11 Facsimile: +1.212.614.6499

12 SOUTHERN POVERTY LAW CENTER

13 Sarah Rich (GA Bar No. 281985) (*pro hac vice*)

14 *sarah.rich@splcenter.org*

15 Rebecca Cassler (MN Bar No. 0398309) (*pro hac vice*)

16 *rebecca.cassler@splcenter.org*

17 150 E. Ponce de Leon Ave., Suite 340

18 Decatur, GA 30030

19 Telephone: +1.404.521.6700

20 Facsimile: +1.404.221.5857

21 AMERICAN IMMIGRATION COUNCIL

22 Karolina Walters (DC Bar No. 1049113) (*pro hac vice*)

23 *kwalters@immcouncil.org*

24 1331 G St. NW, Suite 200

25 Washington, D.C. 20005

26 Telephone: +1.202.507.7523

27 Facsimile: +1.202.742.5619

28



FOR OFFICIAL USE ONLY

Office of Inspector General
Office of Inspections

Project #18-122-ISP-CBP

Separation of Asylum-Seeking Parents from Children

San Ysidro East Port of Entry

Preparer: Adam Brown, 9/12/18

Reviewer:

Paul Lewandowski 10/16/2018

Memorandum of Record

Attendees:

BPA:

Robert "Bob" W. Hood, Assistant Port

Director

Karen Ah Nee, Chief CBP Officer,

Admissibility Unit

DHS OIG:

Elizabeth Kingma, Team Lead

Adam Brown, Senior Inspector

Stephen Farrell, Inspector

Paul Lewandowski, Inspector

Location: San Ysidro Port of Entry, 720 E San Ysidro Blvd, San Diego, CA 92173

Date/Time: Tuesday, August 28, 2018, 10:00 a.m.

Purpose: To observe operations and conditions of CBP facilities used to hold immigrants pending determination of immigration status.

Source: Calexico Port of Entry staff and facility observations

Scope: To observe and learn about all aspects of processing and separating family members before, during, and after implementing "zero tolerance" and after the June 20, 2018 Executive Order that halted family separations.

Methodology: Tour facility and interview OFO staff members. This site visit was unannounced.

Conclusion:

- CBP uses a queue management system when a facility is at capacity and cannot process aliens. They send aliens to Mexican Authorities to put their names on a list.
- The San Ysidro POE does not separate families unless the parent is a danger to the child.
- San Ysidro encourages asylum-seekers to cross the border at the Ped East facility because they have greater capacity.

Details:

Background

[PAGE * MERGEFORMAT]2

FOR OFFICIAL USE ONLY



Office of Inspector General
Office of Inspections

Project #18-122-ISP-CBP

Separation of Asylum-Seeking Parents from Children

San Ysidro East Port of Entry

Preparer: Adam Brown, 9/12/18

Reviewer:

Paul Lewandowski 10/16/2018

- 11 Ms. Karen Ah Nee (KAN): Mexico redirects asylum-seekers to shelters in Tijuana until CBP
12 has the space to process them at the San Ysidro Pedestrian East (Ped East) Port of Entry
13 (POE). Asylum-seekers from San Ysidro Pedestrian West (Ped West) are redirected to Ped East
14 to be processed because of issues with space at Ped West. On the Mexican side, there is a
15 numerical tracking system for tracking and organizing asylum seekers. CBP tells Mexican
16 immigration how to prioritize people waiting to claim asylum. Unaccompanied children
17 (UACs), pregnant women, people with medical issues, and families take priority over others.
18 However, there is no formal agreement with Mexico.
- 19 Elizabeth Kingma (EK): How do you let the Mexican authorities known when you have
20 space?
- 21 KAN: We reach out via telephone to Grupo Beta, the humanitarian arm of the Mexican
22 Immigration system. We let them know how many people we can process. Grupo Beta goes to
23 the shelters in Tijuana and transfers asylum seekers to the POE by bus.
- 24 KAN: Otay Mesa is another nearby port of entry that used to be administratively part of San
25 Ysidro, but is now an independent Port of Entry. It processes asylum seekers separately, but
26 here is San Ysidro, we hold them longer term.
- 27 EK: Are you concerned the metering process at Ped East makes it too dangerous for
28 Mexicans to claim asylum?
- 29 KAN: I am not aware of any concerns from Mexicans. Most Mexican claiming asylum are
30 from deep in the middle of Mexican and they are trying to escape drug violence.
- 31 EK: How long do most asylum-seekers wait?
- 32 KAN: Families move quickly, usually within 48 hours but during the move to the new facility
33 at Ped East, CBP fell behind and families were waiting longer than normal. [OIG note: The
34 new Ped East facility opened August 16, 2018.] Most families are released with a Notice to
35 Appear (NTA). CBP uses NTA but Immigration and Customs Enforcement (ICE) makes the
36 decision whether to release or detain immigrants. The decision is based on available bed
37 space at detention facilities.
- 38 EK: How did the zero-tolerance policy affect Ped East?
- 39 KAN: We were not affected by the policy at all. We do not separate families unless the parent
40 has a violent criminal record or drug arrest. We may also separate families if the parent has a
41 warrant. Most families do not have criminal records. We have separated less than 5 families
42 since April 1, 2018.
- 43 EK: What is the cell capacity at Ped East?
- 44 KAN: The General Services Administration (GSA) determines our capacity and they say we
45 can hold 300 but in reality, we can hold far less. GSA does not take into account space for
46 sleeping.
- 47 EK: How many pedestrians cross each day?

[PAGE * MERGEFORMAT]2

FOR OFFICIAL USE ONLY



Office of Inspector General
Office of Inspections

Project #18-122-ISP-CBP

Separation of Asylum-Seeking Parents from Children

San Ysidro East Port of Entry

Preparer: Adam Brown, 9/12/18

Reviewer:

Paul Lewandowski 10/16/2018

48 KAN: It varies but it's about 25,000 a day for both Ped East and Ped West. 40,000 – 45,000
49 vehicles cross each day.

50 **Ped West Port of Entry**

51 Ms. Ah Nee drove us to the Ped West facility which is just a few minutes away from Ped East.

52



53

54 KAN: Undocumented immigrants used to wait on “the spiral” until CBP had space to process
55 them [The spiral is the winding staircase just across the border in Mexico at the Ped West
56 crossing. See it pictured above.]. They would use the bathroom right there right there in
57 public.

58 EK: Can you describe the metering process>

[PAGE * MERGEFORMAT]2

FOR OFFICIAL USE ONLY



Office of Inspector General
Office of Inspections

Project #18-122-ISP-CBP

Separation of Asylum-Seeking Parents from Children

San Ysidro East Port of Entry

Preparer: Adam Brown, 9/12/18

Reviewer:

Paul Lewandowski 10/16/2018

KAN: We have had CBP officers at the border checking for documents long before metering was a thing. We no longer accept asylum-seekers here at Ped West. They have to take buses to Ped East. Ped West has 14 pedestrian lanes and Ped East has 22. CBP processes about 10,000 pedestrians a day at Ped East and 15,000 a day at Ped West. CBP expects the traffic to shift once word gets out that Ped East is open with more pedestrian lanes.

We were only at Ped West for a few minutes until we got back into the van and Ms. Ah Nee drove us back to Ped East for a tour.

Ped East Tour



The picture above is what border crossers see after they cross the border. Border crossers enter through the door on the left and then wait in the primary pedestrian inspection lanes.

Below is a picture of the primary inspection lanes.

[PAGE * MERGEFORMAT]2

FOR OFFICIAL USE ONLY



Office of Inspector General
Office of Inspections

Project #18-122-ISP-CBP

Separation of Asylum-Seeking Parents from Children

San Ysidro East Port of Entry

Preparer: Adam Brown, 9/12/18

Reviewer:

Paul Lewandowski 10/16/2018



71

[PAGE * MERGEFORMAT]2

Highly Confidential/Attorneys' Eyes Only

AOL-DEF-00205970

3-SER-679



FOR OFFICIAL USE ONLY

Office of Inspector General
Office of Inspections

Project #18-122-ISP-CBP

Separation of Asylum-Seeking Parents from Children

San Ysidro East Port of Entry

Preparer: Adam Brown, 9/12/18

Reviewer:

Paul Lewandowski 10/16/2018

The Limit Line at San Ysidro.



While watching the "limit-line" or metering process at San Ysidro, we saw a family with a single mom and 2 children approach the CBP Officer at the border and ask for asylum. The CBP Officer explained the process of going to a shelter in Mexico to add their names to a list. He appeared to direct them to a Grupo Beta official. We witnessed the family get into a vehicle and drive away.

While the CBP officer talked to the family, we witnessed contract security personnel checking documents at the limit line. They were letting people through the limit line. Chief Ah Nee said the contract security officers only let people through the limit line if they have a Secure Electronic Network for Travelers Rapid Inspection (SENTRI) card.

[PAGE * MERGEFORMAT]2

FOR OFFICIAL USE ONLY



Office of Inspector General
Office of Inspections

Project #18-122-ISP-CBP

Separation of Asylum-Seeking Parents from Children

San Ysidro East Port of Entry

Preparer: Adam Brown, 9/12/18

Reviewer:

Paul Lewandowski 10/16/2018

83 KAN: Processing asylum-seekers is only 10 percent of what we do. Once we let the Mexican
84 authorities know how many asylum-seekers we can take, they figure out who is next on the
85 list and they bring them to the border by bus.

86 We walked from the limit line to the area CBP uses to process asylum seekers. [See picture
87 below.] It is an area that is separated from the regular primary lanes. Chief Ah Nee said it
88 designed this way to process busloads of people quickly.



89
90 At 2:30pm we witnessed 4 CBP Officers finish the initial intake of a group of 30 asylum
91 seekers in less than 25 minutes. When the group arrived to this area, CBP officers lined them
92 up against the wall and asked them to take off their shoes and remove their shoe laces. Then
93 the asylum-seekers make their way to the processing lanes where CBP officers asked for
94 biographical and health information.

[PAGE * MERGEFORMAT]2

FOR OFFICIAL USE ONLY



Office of Inspector General
Office of Inspections

Project #18-122-ISP-CBP

Separation of Asylum-Seeking Parents from Children

San Ysidro East Port of Entry

Preparer: Adam Brown, 9/12/18

Reviewer:

Paul Lewandowski 10/16/2018

95 Once CBP finished primary inspection, the group went to another processing area where
96 more detailed information was captured. CBP officers also performed pat-downs. CBP officers
97 even check the pockets of the children. We witnessed a female CBP Officer jokingly asking
98 the children if they had any money before she checked their pockets. CBP officers were
99 generally respectful of the adult and minor asylum seekers during the process. CBP officers
100 also take the immigrants' luggage and tag it for storage in a room near the processing area.
101 CBP officers also make copies of documents and store the originals with the property. See the
102 luggage holding room below.



103
104 Once CBP stores the property, the immigrants go to a third processing area where
105 fingerprints and pictures are taken. This is where the CBP Officers enter information into
106 SIGMA to create the A-Files. The area has snacks, diapers, water fountains, and bathrooms.
107 KAN: Most detainees get 2 hot meals a day but children and pregnant women can eat
108 whenever they want. We also let families eat together. The final step is a more in depth
109 interview, which we complete and send to ICE. Occasionally, we receive asylum seekers from

[PAGE * MERGEFORMAT]2

FOR OFFICIAL USE ONLY



Office of Inspector General
Office of Inspections

Project #18-122-ISP-CBP

Separation of Asylum-Seeking Parents from Children

San Ysidro East Port of Entry

Preparer: Adam Brown, 9/12/18

Reviewer:

Paul Lewandowski 10/16/2018

110 countries with known security threats. These Special Interest Aliens are handled by
111 specialized processors.

112 KAN: Here is San Ysidro, we have a physician's assistant on staff who can provide basic
113 medical care and triage issues. Medications are held outside the cells and are issued to
114 detainees as required.

[PAGE * MERGEFORMAT]2

1 MAYER BROWN LLP
Matthew H. Marmolejo (CA Bar No. 242964)
2 *mmarmolejo@mayerbrown.com*
350 S. Grand Avenue
3 25th Floor
Los Angeles, CA 90071-1503
4 Ori Lev (DC Bar No. 452565)
(*pro hac vice*)
5 *olev@mayerbrown.com*
Stephen M. Medlock (VA Bar No. 78819)
6 (*pro hac vice*)
smedlock@mayerbrown.com
7 1999 K Street, N.W.
Washington, D.C. 20006
8 Telephone: +1.202.263.3000
Facsimile: +1.202.263.3300
9

SOUTHERN POVERTY LAW CENTER
10 Melissa Crow (DC Bar No. 453487)
(*pro hac vice*)
11 *melissa.crow@splcenter.org*
1101 17th Street, N.W., Suite 705
12 Washington, D.C. 20036
Telephone: +1.202.355.4471
13 Facsimile: +1.404.221.5857

14 *Additional counsel listed on next page*
15 *Attorneys for Plaintiffs*

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 Al Otro Lado, Inc., *et al.*,

19 Plaintiffs,

20 v.

21 Chad F. Wolf,¹ *et al.*,

22 Defendants.
23
24

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 17 IN SUPPORT OF
PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF THEIR MOTION
FOR SUMMARY JUDGMENT**

FILED UNDER SEAL

25
26
27
28 ¹ Acting Secretary Wolf is automatically substituted for former Acting Secretary
McAleenan pursuant to Fed. R. Civ. P. 25(d).

1 CENTER FOR CONSTITUTIONAL RIGHTS

2 Baher Azmy (NY Bar No. 2860740) (*pro hac vice*)

3 *bazmy@ccrjustice.org*

4 Ghita Schwarz (NY Bar No. 3030087) (*pro hac vice*)

5 *gschwarz@ccrjustice.org*

6 Angelo Guisado (NY Bar No. 5182688) (*pro hac vice*)

7 *aguisado@ccrjustice.org*

8 666 Broadway, 7th Floor

9 New York, NY 10012

10 Telephone: +1.212.614.6464

11 Facsimile: +1.212.614.6499

12 SOUTHERN POVERTY LAW CENTER

13 Sarah Rich (GA Bar No. 281985) (*pro hac vice*)

14 *sarah.rich@splcenter.org*

15 Rebecca Cassler (MN Bar No. 0398309) (*pro hac vice*)

16 *rebecca.cassler@splcenter.org*

17 150 E. Ponce de Leon Ave., Suite 340

18 Decatur, GA 30030

19 Telephone: +1.404.521.6700

20 Facsimile: +1.404.221.5857

21 AMERICAN IMMIGRATION COUNCIL

22 Karolina Walters (DC Bar No. 1049113) (*pro hac vice*)

23 *kwalters@immcouncil.org*

24 1331 G St. NW, Suite 200

25 Washington, D.C. 20005

26 Telephone: +1.202.507.7523

27 Facsimile: +1.202.742.5619

28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AL OTRO LADO, INC., et al.,

Plaintiffs,

vs.

Case No.

17-cv-02366-BAS-KSC

KEVIN K. McALEENAN¹, et al.,

Defendants.

~~~~~

VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF  
MARIZA MARIN

THURSDAY, MAY 28, 2020  
8:37 A.M.

SAN DIEGO, CALIFORNIA

Reported remotely by Megan M. Grossman-Sinclair,  
CSR No. 12586

APPEARANCES OF COUNSEL

For Plaintiffs:

MAYER BROWN LLP  
STEPHEN M. MEDLOCK, ESQ.  
(By Videoconference)  
1999 K Street, N.W.  
Washington, D.C. 20006  
T: (202) 263-3000  
smedlock@mayerbrown.com

CENTER FOR CONSTITUTIONAL RIGHTS  
ANGELO GUISADO, ESQ.  
(By Videoconference)  
666 Broadway  
7th Floor  
New York, New York 10012  
T: (212) 614-6464  
aguisado@ccrjustice.org

For Defendants:

U.S. Department of Justice  
OFFICE OF IMMIGRATION LITIGATION  
KATHERINE J. SHINNERS, ESQ.  
(By Videoconference)  
SUSAN IMERMAN, ESQ.  
(By Telephone)  
Ben Franklin Square  
P.O. Box 868  
Washington, D.C. 20044  
T: (202) 598-8259  
katherine.j.shinners@usdoj.gov

1 on any given day on any shift that I don't think  
2 it's fair to think that any watch commander would  
3 get every single thing that happened on a shift in  
4 all the reports.

5 BY MR. MEDLOCK:

6 Q. When did you become the assistant  
7 director of field operations for the San Diego  
8 field office?

9 A. In September of '19.

10 Q. What are your current  
11 responsibilities as assistant director of field  
12 operations for the San Diego field office?

13 A. So I provide support to the DFO for  
14 the board of security realm. So the San Diego  
15 field office is kind of in a realignment phase.  
16 So I also still do quite a bit of work and work  
17 under the division director for the enforcement  
18 division in San Diego. So in the tactical  
19 environment, I kind of serve dual purpose in that  
20 role as well.

21 Q. Who is the enforcement director  
22 that you work under?

23 A. Her name is Rosa Hernandez.

24 Q. And what's the responsibilities of  
25 enforcement as opposed to border security?



1 MS. SHINNERS: Object to the scope.

2 THE WITNESS: So border security, a  
3 lot of the enforcement teams, if you will, are  
4 several units within the enforcement division.  
5 Most fall under the scope of border security. And  
6 so there are several units kind of with specialty  
7 skill sets within the enforcement division.

8 BY MR. MEDLOCK:

9 Q. Let me just back out for a second  
10 about the San Diego field office and make sure I  
11 understand a couple things.

12 So there's four ports of entry in  
13 the San Diego field office; is that correct?

14 A. There are -- are we talking land  
15 ports of entry?

16 Q. Land ports of entry, that's  
17 correct.

18 A. There are five.

19 Q. So there's San Ysidro, Otay Mesa,  
20 Calexico West, Calexico East -- I'm sorry. I see  
21 what you are saying. You have San Ysidro, Otay  
22 Mesa, Calexico, Tecate, and Andrade.

23 Those are the five?

24 A. Correct.

25 Q. Have you ever heard the term

1 "capacity" used with respect to any of those ports  
2 of entry?

3 A. Capacity in general or just have I  
4 ever heard it?

5 Q. Have you ever heard the term  
6 "capacity" used with respect to inspecting and  
7 processing noncitizens who present themselves at  
8 those five land ports of entry?

9 A. Yes, I have.

10 Q. What does the term "capacity" mean  
11 to you as it's used with respect to processing and  
12 inspecting noncitizens that present themselves at  
13 the five land ports of entry in the San Diego  
14 field office?

15 MS. SHINNERS: I just want to  
16 clarify. Are you asking her personally or asking  
17 her view as a CBP?

18 MR. MEDLOCK: So I am asking her  
19 personally because I think that's not encompassed  
20 in the two topics that she is being asked to  
21 testify about.

22 MS. SHINNERS: Okay.

23 THE WITNESS: So I think we really  
24 need to define "capacity," and so the term  
25 "capacity," plus there are really two different

1 terms for that. There is a physical capacity  
2 that's kind of a set number that's -- that really  
3 is not operationally feasible. There is an  
4 operational capacity that fluctuates from day to  
5 day, minute to minute. So there are different  
6 capacities of ports of entry.

7 BY MR. MEDLOCK:

8 Q. To your knowledge, is the  
9 distinction between physical capacity and  
10 operational capacity memorialized in any sort of  
11 regulation?

12 MS. SHINNERS: Object to the scope.

13 THE WITNESS: So to my knowledge, I  
14 don't know that there is any regulation where  
15 that's memorialized.

16 BY MR. MEDLOCK:

17 Q. Is there any sort of statute that  
18 makes a distinction between physical capacity and  
19 operational capacity, to your knowledge?

20 MS. SHINNERS: Object to the scope.

21 THE WITNESS: My -- not to my  
22 knowledge.

23 BY MR. MEDLOCK:

24 Q. Is there any form of guidance from  
25 OFO leadership that makes a distinction between

1 physical capacity and operational capacity that  
2 you are aware of?

3 MS. SHINNERS: Object to the scope.

4 THE WITNESS: So we have always had  
5 an operational capacity, you know, for as long as  
6 I have kind of worked in detention, and so that  
7 there is specific guidance on what is and what is  
8 not operational capacity, to my knowledge, no.

9 BY MR. MEDLOCK:

10 Q. So the answer is you are not aware  
11 of any guidance from OFO leadership that defines  
12 the difference between physical capacity and  
13 operational capacity; is that right?

14 MS. SHINNERS: Object to the scope.

15 THE WITNESS: I'm not sure I  
16 understand your question fully.

17 BY MR. MEDLOCK:

18 Q. Have you ever received a memorandum  
19 from anybody in the leadership of OFO that  
20 explained the difference between operational  
21 capacity and physical capacity?

22 MS. SHINNERS: Object to the scope.

23 THE WITNESS: So I have seen a  
24 memorandum that talks about operational capacity,  
25 but to the extent that it defines it and gives us

1 guidance on what that is, I would say it does not  
2 do that.

3 BY MR. MEDLOCK:

4 Q. Have you ever seen a standard  
5 operating procedure that defines the term  
6 "operational capacity" and explains what it is?

7 MS. SHINNERS: Object to the scope.

8 THE WITNESS: That defines it, no.  
9 And I'm not sure. I would have to look back at  
10 any of the standard operating procedures, but,  
11 again, for as long as I have worked in detention  
12 as a manager, going back to '15-'16, we have  
13 always used operational capacity.

14 BY MR. MEDLOCK:

15 Q. Have you ever seen a written muster  
16 that defines the term "operational capacity"?

17 MS. SHINNERS: Object to the scope.

18 THE WITNESS: That defines  
19 "operational capacity"? Not that I can recall,  
20 no.

21 BY MR. MEDLOCK:

22 Q. Are you aware of any sort of  
23 official document at CBP that defines the term  
24 "operational capacity"?

25 MS. SHINNERS: Object to the scope.

1 THE WITNESS: Again, I have seen  
2 documents that say "operational capacity" and  
3 discuss it, but that actually define what that is,  
4 I am not aware, no.

5 MS. SHINNERS: Is now --

6 MR. MEDLOCK: I have just got a  
7 couple more questions. I have just got a couple  
8 more questions and we can take a break. Thank  
9 you, Katie.

10 BY MR. MEDLOCK:

11 Q. So that I understand, you  
12 understand what the term "operational capacity"  
13 means, but you have never seen any sort of  
14 document at CBP that defines the term?

15 MS. SHINNERS: Object to the scope.

16 THE WITNESS: That specifically  
17 define what exactly it is, I have not seen that.

18 BY MR. MEDLOCK:

19 Q. There is no official guidance that  
20 tells CBP employees how they should define the  
21 term "operational capacity"; correct?

22 MS. SHINNERS: Object to the scope.

23 THE WITNESS: Again, in my  
24 knowledge, no.

25 ///

1 BY MR. MEDLOCK:

2 Q. Do you know whether your definition  
3 of "operational capacity" is the same  
4 understanding of operational capacity that a CBP  
5 officer would have at the port of entry in Texas?

6 MS. SHINNERS: Object to the scope.

7 THE WITNESS: So all of the  
8 dynamics that go into operational capacity, it  
9 would not be the same understanding and it would  
10 differ from port of entry to port of entry, from  
11 day to day and sometimes by hour, you know, from  
12 hour to hour because really ports of entry don't  
13 know what's coming in towards them.

14 BY MR. MEDLOCK:

15 Q. My question is a little different.

16 Have you ever spoken to somebody at  
17 a port of entry in Texas to determine how they  
18 define the term "operational capacity"?

19 A. To define it --

20 MS. SHINNERS: Object to the scope.

21 BY MR. MEDLOCK:

22 Q. I couldn't hear you, Ms. Marin.  
23 I'm sorry.

24 A. I have not spoken to someone in  
25 Texas to define "operational capacity."



1 Q. So you don't know how they define  
2 it in the land ports of entry in Texas, do you?

3 MS. SHINNERS: Object to the scope.

4 THE WITNESS: I don't.

5 BY MR. MEDLOCK:

6 Q. So "operational capacity" is a term  
7 that has never been officially defined by CBP, as  
8 far as you know?

9 MS. SHINNERS: Object to the scope.

10 THE WITNESS: As far as I know, it  
11 has not been officially defined, no.

12 MR. MEDLOCK: Okay. Now would be a  
13 good time for a break.

14 MS. SHINNERS: Okay, great. Thank  
15 you.

16 MR. MEDLOCK: Want to take ten  
17 minutes?

18 MS. SHINNERS: I think -- yeah.  
19 Like, 10 or 12 would be great.

20 MR. MEDLOCK: Okay.

21 VIDEOGRAPHER: The time is 9:56  
22 a.m. We are now off the record.

23 (Whereupon, a recess was held from  
24 9:56 a.m. to 10:12 a.m.)

25 VIDEOGRAPHER: The time is 12:13

1 a.m. We are now back on the record.

2 BY MR. MEDLOCK:

3 Q. Welcome back, Ms. Marin.

4 During the break, did you discuss  
5 the substance of your testimony with your counsel?

6 A. I did.

7 Q. Which counsel did you discuss the  
8 substance of your testimony with?

9 A. All of them.

10 Q. And what was discussed about the  
11 substance of your testimony?

12 MS. SHINNERS: Objection. Calls  
13 for attorney-client communication.

14 MR. MEDLOCK: No, it doesn't. Hill  
15 versus Clifton. There is a lot of other cases  
16 about this that when the witness is sworn in and  
17 discusses the substance of their testimony during  
18 the break, it is a -- it is proper grounds for  
19 examination. So I will ask my question again.

20 Sure, it's an Eastern District of  
21 Pennsylvania case from, I believe, 1995, and  
22 there's many, many cases that have followed it.

23 MS. SHINNERS: Well, I am going to  
24 ask what you mean by discussing the substance of  
25 her testimony because otherwise I don't know

1       whether that falls under this case.

2                   MR. MEDLOCK: All right.

3       BY MR. MEDLOCK:

4                   Q. Ms. Marin, you answered "yes," that  
5       you discussed the substance of your testimony with  
6       your attorneys.

7                   What did you mean by that?

8                   A. We just discussed --

9                   MS. SHINNERS: Object. I think we  
10       need a definition of "the substance of the  
11       testimony" before I can let her answer without  
12       instructing her not to answer about  
13       attorney-client communications. And the reason  
14       for that is because there are other communications  
15       that may not fall within the substance of her  
16       testimony or that all the communications may not  
17       fall within the substance of her testimony.

18                  MR. MEDLOCK: All right. She said  
19       "yes," so I am entitled to inquire about it.

20                  Are you going to instruct her not  
21       to answer, Katie?

22                  MS. SHINNERS: I -- if you would --  
23       if you would allow us to consult regarding the  
24       privilege --

25                  MR. MEDLOCK: Sure. Do you want to

1 go off for a second and then talk to Ms. Marin,  
2 and then we will just wait here?

3 MS. SHINNERS: Yes. Yes. Thank  
4 you.

5 MR. MEDLOCK: All right. Why don't  
6 we go off the record, then.

7 VIDEOGRAPHER: Time is 10:15 a.m.  
8 We are now off the record.

9 (Whereupon, a recess was held from  
10 10:15 a.m. to 10:24 a.m.)

11 VIDEOGRAPHER: The time is 10:24  
12 a.m. We are now back on the record.

13 BY MR. MEDLOCK:

14 Q. Ms. Marin, I want to go back to the  
15 question I asked you right after the prior break.

16 Did you have a conversation or  
17 conversations with your attorneys during that  
18 break regarding the substance of your testimony at  
19 this deposition?

20 A. So I had a conversation with the  
21 attorneys, and I guess I over-generalized when I  
22 said "yes" on substance. It did not contain the  
23 substance of the conversation. It was a general  
24 conversation about the way I was answering  
25 questions. I mean, we didn't go over what the

1 Contingency Plan"?

2 A. Yes.

3 Q. And beneath that there is a  
4 Subsection 11.1; correct?

5 A. Correct.

6 Q. And Subsection 11.1 reads in part:

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Did I read that correctly?

12 A. Yes.

13 Q. [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 A. Correct.

18 Q. And you said earlier that it's  
19 impossible to actually hit the physical capacity  
20 of a port of entry; correct?

21 A. I don't believe I said it's  
22 impossible to hit the capacity, no.

23 Q. Okay. But in any instance, the San  
24 Diego field office decided [REDACTED]

25 [REDACTED]

1 individuals were in the AEU; correct?

2 A. At the time this was drafted, yes.

3 Q. Do you have any explanation for why  
4 the overflow contingency doesn't consider  
5 operational capacity?

6 MS. SHINNERS: Object to the scope.  
7 You can answer.

8 THE WITNESS: Operational capacity  
9 is not -- for us is not a hard number or hard  
10 ceiling. It's a ballpark that we attempt to stay  
11 around to safely have the resources available to  
12 process and adequately care for people in our  
13 custody. That does not mean that that is a  
14 maximum ceiling of capacity for us.

15 BY MR. MEDLOCK:

16 Q. So the maximum ceiling of capacity  
17 can be higher than operational capacity; correct?

18 A. Right, because operational capacity  
19 will vary each day based on all of those factors.

20 Q. And it can be the case that the  
21 port -- a port of entry can physically hold more  
22 people than the operational capacity of the port;  
23 is that right?

24 A. Could physically hold more, but we  
25 have to weigh the ability to humanely uphold all

1 of the detention standards that are required of us  
2 by policy.

3 Q. If you wanted to humanely uphold  
4 those policies, why doesn't the overflow  
5 contingency plan shown in Subsection 11.1 of  
6 Exhibit 185 reference operational capacity?

7 MS. SHINNERS: Object to the scope.

8 THE WITNESS: I don't know the  
9 answer to that.

10 MR. MEDLOCK: Kevin, if you could  
11 bring down the box for overflow contingency plan?  
12 BY MR. MEDLOCK:

13 Q. I am going to have Kevin flip  
14 through this document, and please stop him when  
15 you find a reference to the phrase "operational  
16 capacity" anywhere in this AEU standard operating  
17 procedure.

18 (Document reviewed by witness on  
19 screen.)

20 MS. SHINNERS: Object to the scope.

21 THE WITNESS: I don't see it on  
22 that page.

23 MR. MEDLOCK: Okay. Let's move to  
24 the second page of the exhibit.

25 (Document reviewed by witness on

1 screen.)

2 BY MR. MEDLOCK:

3 Q. Do you see a reference to the  
4 phrase "operational capacity" anywhere on the  
5 second page of Exhibit 185?

6 MS. SHINNERS: Object to the scope  
7 and for this line of questioning.

8 THE WITNESS: I do not see it.

9 BY MR. MEDLOCK:

10 Q. Okay. Let's turn to the third page  
11 of Exhibit 185. Please let me know if you see the  
12 phrase "operational capacity" mentioned anywhere  
13 on the third page of Exhibit 185.

14 (Document reviewed by witness on  
15 screen.)

16 THE WITNESS: I do not see it  
17 there.

18 BY MR. MEDLOCK:

19 Q. Let's go to the next page of  
20 Exhibit 185, and let me know whether you see a  
21 reference to operational capacity on this page of  
22 Exhibit 185.

23 (Document reviewed by witness on  
24 screen.)

25 THE WITNESS: I do not see it



1       there.

2       BY MR. MEDLOCK:

3               Q.    Let's move to the next page of  
4       Exhibit 185.  Let me know if you see the phrase  
5       "operational capacity" referenced anywhere on this  
6       page of Exhibit 185.

7               (Document reviewed by witness on  
8       screen.)

9               THE WITNESS:  I do not see that  
10      phrase.

11      BY MR. MEDLOCK:

12              Q.    All right.  Let's move to the next  
13      page of Exhibit 185, and let me know if you see a  
14      reference to the phrase "operational capacity" on  
15      this page of Exhibit 185.

16              (Document reviewed by witness on  
17      screen.)

18              THE WITNESS:  I do not see that  
19      phrase.

20      BY MR. MEDLOCK:

21              Q.    Let's move to the next page of  
22      Exhibit 185.  Do you see a reference to the phrase  
23      "operational capacity" anywhere on this page of  
24      Exhibit 185?

25              (Document reviewed by witness on

1 screen.)

2 THE WITNESS: I do not see a  
3 reference to the phrase "operational capacity,"  
4 but I do see several reasons why physical capacity  
5 may not be reached.

6 BY MR. MEDLOCK:

7 Q. But the phrase "operational  
8 capacity" is not used anywhere on that page, is  
9 it?

10 A. It is not.

11 Q. And there is no definition of  
12 "operational capacity" anywhere on that page, is  
13 there?

14 A. There is not.

15 Q. Okay. Let's move to the next page.

16 Ms. Marin, do you see any reference  
17 to the phrase "operational capacity" anywhere on  
18 this page of Exhibit 185?

19 MS. SHINNERS: I am just going to  
20 reiterate the objection to scope to this line of  
21 questioning which I previously stated.

22 (Document reviewed by witness on  
23 screen.)

24 THE WITNESS: I do not see the  
25 phrase there.

1 BY MR. MEDLOCK:

2 Q. Let's move to the next page.

3 Do you see a reference to  
4 "operational capacity" anywhere on this page of  
5 Exhibit 185?

6 (Document reviewed by witness on  
7 screen.)

8 THE WITNESS: I do not see it  
9 there.

10 BY MR. MEDLOCK:

11 Q. Let's move to the next page.

12 And as before, let me know if you  
13 see a reference to the phrase "operational  
14 capacity" anywhere on this page of Exhibit 185.

15 (Document reviewed by witness on  
16 screen.)

17 THE WITNESS: I do not see it.

18 BY MR. MEDLOCK:

19 Q. All right. Let's move to the next  
20 page. Let me know whether you see a reference to  
21 "operational capacity" on this page of  
22 Exhibit 185.

23 (Document reviewed by witness on  
24 screen.)

25 THE WITNESS: No, I don't.

1 BY MR. MEDLOCK:

2 Q. Okay. Let's move to the next page,  
3 and let me know whether you see a reference to the  
4 phrase "operational capacity" anywhere on the page  
5 Bates numbered AOL-DEF-00749865.

6 (Document reviewed by witness on  
7 screen.)

8 THE WITNESS: I do not see it  
9 there.

10 BY MR. MEDLOCK:

11 Q. All right. Let's move to the last  
12 page of the document Bates numbered  
13 ALO-DEF-00749866.

14 Let me know if you see the phrase  
15 "operational capacity" mentioned anywhere on this  
16 page of Exhibit 185.

17 (Document reviewed by witness on  
18 screen.)

19 THE WITNESS: I do not see it  
20 there.

21 BY MR. MEDLOCK:

22 Q. Okay. So we have been through  
23 every page of Exhibit 185, and the phrase  
24 "operational capacity" appears nowhere in the  
25 standard operating procedures for the San Ysidro

1 port of entry's admissibility enforcement unit;  
2 correct?

3 A. Correct.

4 Q. And you participated in drafting  
5 this document in 2015; correct?

6 A. Correct.

7 Q. And at that time you understood  
8 what the phrase -- you have already testified you  
9 understand what the phrase "operational capacity"  
10 meant; correct?

11 A. Correct.

12 MS. SHINNERS: Object to the scope.

13 BY MR. MEDLOCK:

14 Q. And do you believe that Mr. Hood  
15 and Mr. Castillo also understood what "operational  
16 capacity" meant?

17 MS. SHINNERS: Objection; calls for  
18 speculation, scope.

19 THE WITNESS: I believe I did.

20 BY MR. MEDLOCK:

21 Q. Did you -- and you never included a  
22 definition of the phrase "operational capacity"  
23 anywhere in these standard operating procedures;  
24 correct?

25 MS. SHINNERS: Object to the form,

1 scope.

2 THE WITNESS: No.

3 BY MR. MEDLOCK:

4 Q. Operational capacity, as you said,  
5 is an important concept for the San Ysidro  
6 admissibility enforcement unit; correct?

7 A. It is.

8 Q. It's an important concept for the  
9 AEU, but it appears nowhere in the standard  
10 operating procedures; is that right?

11 MS. SHINNERS: Object to the scope.

12 THE WITNESS: Correct.

13 BY MR. MEDLOCK:

14 Q. So you expect the court in this  
15 case to believe that operational capacity is so  
16 important that it drives everything that's done on  
17 a daily basis at the San Ysidro AEU but when it  
18 was time to put together the standard operating  
19 procedures that govern day-to-day business at that  
20 AEU, the concept of operational capacity wasn't  
21 mentioned once.

22 Is that what you expect the court  
23 to believe?

24 MS. SHINNERS: Object to the scope.

25 Argumentative.

1 THE WITNESS: That was a given for  
2 us. Even during the drafting of that, we knew  
3 that we always had the discretion to operate  
4 within operational capacity.

5 BY MR. MEDLOCK:

6 Q. So it was just a given, so you  
7 didn't write it down.

8 Is that your testimony?

9 MS. SHINNERS: Object to the scope.

10 THE WITNESS: Yes.

11 BY MR. MEDLOCK:

12 Q. Is it your testimony that  
13 "operational capacity" never needed to be defined  
14 because everybody understood what it meant and  
15 acted accordingly?

16 MS. SHINNERS: Object to the scope.

17 THE WITNESS: I can't speak to what  
18 everyone knew, whether it meant or not, but the  
19 decision-makers in the unit clearly understood  
20 what operational capacity was and that it  
21 fluctuated on any given day on what the detention  
22 capacity.

23 BY MR. MEDLOCK:

24 Q. Can you explain to me why, if  
25 operational capacity was such an important concept

1 for day-to-day operations of the admissibility  
2 enforcement unit at San Ysidro, why it was never  
3 defined or written down once?

4 MS. SHINNERS: Object to the scope.

5 THE WITNESS: I can't explain why  
6 it was never written down, but why it's not  
7 defined is that there isn't -- there isn't a  
8 concrete definition of what that is. There are  
9 several factors that are always changing in  
10 dynamic that would affect the capacity on any  
11 given day.

12 BY MR. MEDLOCK:

13 Q. Did anyone that you are aware of  
14 any level at CBP ever write down what the factors  
15 were that determined the operational capacity on  
16 any given day?

17 MS. SHINNERS: Object to the scope.

18 THE WITNESS: Not to my knowledge.

19 BY MR. MEDLOCK:

20 Q. And you certainly didn't do that in  
21 the standard operating procedures for the  
22 San Ysidro admissibility enforcement unit;  
23 correct?

24 MS. SHINNERS: Object to the scope.

25 THE WITNESS: I did not.



1 BY MR. MEDLOCK:

2 Q. Are you aware of any form of  
3 official or unofficial document at CBP that lays  
4 out the factors to be considered when determining  
5 what operational capacity is?

6 MS. SHINNERS: Object to the scope.

7 THE WITNESS: I am not aware.

8 BY MR. MEDLOCK:

9 Q. So to your knowledge, no policy  
10 exists defining the factors to be used when  
11 determining operational capacity?

12 MS. SHINNERS: Object to the scope.

13 THE WITNESS: To my knowledge, no.

14 BY MR. MEDLOCK:

15 Q. So operational capacity is really  
16 just an unwritten policy that's based on the gut  
17 of the officials at a port of entry; correct?

18 MS. SHINNERS: Object to the scope.

19 THE WITNESS: Operational capacity  
20 is not based on the gut of officials. I would not  
21 say that, no. There are several factors that go  
22 into operational capacity. If I have a family  
23 unit that comes in and they have -- one of the  
24 children in the family unit has chicken pox, a  
25 hold room that could hold 24 -- that's a family

1 unit of four is going to affect my capacity that  
2 day because I can't potentially put anyone else at  
3 risk of contracting a contagious illness. If they  
4 have --

5 BY MR. MEDLOCK:

6 Q. Okay. And that's your testimony,  
7 that's the actual policy of CBP that a family has  
8 to be put into an isolation unit; is that correct?

9 MS. SHINNERS: Object to the scope.

10 THE WITNESS: I cannot speak to the  
11 policy of CBP, but at San Ysidro in the  
12 admissibility enforcement unit, if there is a  
13 contagious illness, we will absolutely take every  
14 step possible to make sure that the ill parties  
15 are taken care of, but we also have a  
16 responsibility to ensure that they are isolated  
17 from the rest of the population to ensure that we  
18 don't have an outbreak.

19 BY MR. MEDLOCK:

20 Q. But you don't actually know what  
21 the policy of CBP is on housing individuals with  
22 chicken pox or another communicable disease, do  
23 you?

24 MS. SHINNERS: Object to the scope.

25 THE WITNESS: I don't know the

1 A. Yes.

2 Q. And when you use that term, you  
3 don't distinguish to the person you are talking to  
4 whether you are talking about operational capacity  
5 or physical capacity, do you?

6 MS. SHINNERS: Object to the scope.

7 THE WITNESS: I can't say that I  
8 never do, but in this e-mail I did not.

9 BY MR. MEDLOCK:

10 Q. Okay. And then you go on in the  
11 next sentence to write:

12 "If we reach 316 tonight and  
13 have to hold, I will send you  
14 notification."

15 Did I read that correctly?

16 A. Yes.

17 Q. So in this e-mail, you stated that  
18 316 was the number at which the San Ysidro port of  
19 entry would have to hold; correct?

20 A. Correct.

21 Q. So it was the actual maximum  
22 capacity listed on the standard operating  
23 procedure that determined when San Ysidro had to  
24 hold intake; correct?

25 A. 316, it appeared from this e-mail,

1 would have been what I decided that day to be my  
2 operational capacity.

3 Q. Okay. So it's just a coincidence  
4 that the operational capacity that day was the  
5 actual maximum capacity at the AEU?

6 A. I can't speculate if it was  
7 coincidence or not.

8 Q. On how many days in a year is the  
9 actual operational capacity of the San Ysidro port  
10 of entry 316?

11 A. I don't have that number.

12 Q. You couldn't tell me -- you  
13 couldn't tell me a percentage of days in which 316  
14 is the actual operational capacity in any given  
15 year?

16 A. I cannot. And even on that day, we  
17 could have reached 316 from the limit line, and  
18 then four imposters and eight vehicle cases come  
19 in, and my new operational capacity was 328. So,  
20 again, that number is fluid for us when I am  
21 talking operational capacity.

22 Q. Do you know if the operational  
23 capacity of the San Ysidro port of entry changed  
24 on April 18, 2018?

25 A. At any time?

1 Q. Yeah.

2 A. I don't know off the top of my  
3 head, no.

4 Q. Do you know if it changed after  
5 6:35 p.m. on April 18, 2018?

6 A. I don't know.

7 Q. Can you, as you sit here today, go  
8 back and reconstruct for me what the operational  
9 capacity of the San Ysidro port of entry was on  
10 any given day between May 2016 and the present?

11 A. Are you asking me to reconstruct  
12 the daily operational capacity?

13 Q. Yes, correct.

14 A. I cannot do that.

15 Q. Do you know of anybody at CBP who  
16 can do that?

17 A. Again, that number --

18 MS. SHINNERS: Object to the scope.

19 THE WITNESS: That number is fluid  
20 and varies from day to day. So no, I do not  
21 believe anyone can do that.

22 BY MR. MEDLOCK:

23 Q. Do you know of any sort of report  
24 or data that exists at CBP that would enable  
25 anyone at CBP or otherwise to determine what the

1       daily operational capacity of any port of entry  
2       was?

3                   MS. SHINNERS:   Object to the scope.

4                   THE WITNESS:   I do not know of any  
5       report that's going to give you a daily  
6       operational capacity.   Again, that's fluid, it's  
7       very dynamic, and it changes multiple times even  
8       within a day.

9       BY MR. MEDLOCK:

10                  Q.    So let me get this straight.

11                        The operational capacity of a port  
12       of entry is not defined in any official document;  
13       correct?

14                  A.    To my knowledge --

15                       MS. SHINNERS:   Object to the scope.

16       BY MR. MEDLOCK:

17                  Q.    And you can't tell me what it is on  
18       any given day; correct?

19                  A.    Correct.

20                  Q.    And you can't even tell me what the  
21       factors were that would have led to the  
22       operational capacity changing at any given point  
23       in time, can you?

24                  A.    I can tell you several factors that  
25       would change our operational capacity at any given

1 time.

2 Q. But you can't tell me which factor  
3 it was that caused the operational capacity to  
4 change at any given time; correct?

5 A. Correct.

6 MS. SHINNERS: Object to the scope,  
7 vague.

8 BY MR. MEDLOCK:

9 Q. I'm sorry. I couldn't hear you,  
10 Ms. Marin. What was your answer to my question?

11 A. "Correct."

12 Q. So how do you expect the court in  
13 this case to believe you that operational capacity  
14 exists when it isn't written down, you can't tell  
15 the court what it is, and you can't tell the court  
16 how it changed?

17 MS. SHINNERS: Object to the scope.

18 THE WITNESS: I can only speak to  
19 the facts that it changed every day. There are  
20 concrete reasons on why it would change, and that  
21 is the reality of the operation that we work with.

22 BY MR. MEDLOCK:

23 Q. And was there ever any e-mail or  
24 memorandum that was sent out that explained, our  
25 operational capacity changed from 316 to 285 on

1       you Tab 17 --

2                               Kevin.

3                               -- which we will mark as

4       Exhibit 197 to your deposition. And Exhibit 197

5       is a spreadsheet bearing the Bates number

6       AOL-DEF-00523370.

7                               (Exhibit No. 197 was marked for

8                               identification by the shorthand

9                               reporter and is attached hereto.)

10      BY MR. MEDLOCK:

11                    Q. And my first question to you,

12      Ms. Marin, if this appears to be a queue

13      management report for July 2nd, 2019; correct?

14                    A. Correct.

15                    Q. And July 2nd, 2019, is the second

16      date that was mentioned in Paragraph 12 of your

17      declaration; correct?

18                    A. Correct.

19                    Q. And if you look in the row for

20      San Ysidro, it shows that there are 294

21      individuals in custody at the AEU for 98 percent

22      capacity; correct?

23                    A. Yes.

24                    Q. And by the way, in this chart it

25      says "percentage of capacity." It doesn't say



1 operational capacity. It doesn't say physical  
2 capacity. It just says "capacity"; correct?

3 A. Correct.

4 Q. And then in the column for port  
5 operations, it says "no impact"; correct?

6 A. Correct.

7 Q. Which you now claim means no impact  
8 out of the ordinary; correct?

9 A. Correct.

10 Q. You could have written "no impact  
11 out of the ordinary." It's just three extra  
12 words. Why didn't you do that?

13 A. Again, I'm not sure that I wrote  
14 the report or another supervisor wrote the report,  
15 but we knew that what we meant by "no impact" was  
16 no impact out of the normal, impact that everyone  
17 knew about. We didn't see a reason to continue to  
18 report on a day-to-day basis.

19 Q. And you do want to be clear in the  
20 communications that were going to management at  
21 OFO; correct?

22 A. Correct.

23 Q. And you knew that management at OFO  
24 saw a version of the queue management report;  
25 correct?

1 A. Correct.

2 Q. So if you wanted to be clear in  
3 what you were communicating to your management and  
4 senior leadership at OFO, why not just write the  
5 three extra words to make this say "no impact out  
6 of the ordinary"?

7 A. It was our understanding that even  
8 senior management knew "no impact" was -- were  
9 things out of the ordinary for the port of entry  
10 that was making the report. So I can't speculate  
11 as to why whoever filled out the report did not  
12 write three extra words, but it was because we  
13 knew that that's what that meant.

14 Q. So you can't speculate as to why  
15 they do it, but you knew that the reason why they  
16 did that was -- why this just says "no impact" is  
17 because everybody knew what "no impact" meant; is  
18 that right?

19 A. Correct.

20 Q. Do you know what "no impact" means  
21 when it's used with respect to Tecate?

22 A. It would mean the same for all of  
23 us.

24 MS. SHINNERS: Sorry. Object to  
25 the scope.

1 But go ahead.

2 BY MR. MEDLOCK:

3 Q. Do you know what "no impact" means  
4 with respect to Calexico?

5 A. Yes.

6 Q. Okay. And does "no impact" mean no  
7 impact out of the ordinary when it's used with  
8 respect to Calexico?

9 A. Yes.

10 Q. Isn't it true that the queue  
11 management reports said "no impact" to port  
12 operations regardless of the number of people in  
13 custody and the capacity of the port?

14 A. Yes, that is true.

15 Q. Okay. Let's take a look at Tab 18,  
16 which is an exhibit we will mark as Exhibit 198 to  
17 your deposition.

18 THE COURT REPORTER: Excuse me,  
19 Counsel. This is the reporter. There have been a  
20 few documents marked as the same exhibit. There's  
21 a bit of confusion with the exhibits. I just  
22 wanted to let you know. I don't know if you want  
23 to go off the record to figure it out.

24 MR. MEDLOCK: Why don't we do this.  
25 We will mark Tab 18 as Exhibit 200, and I know we

1 haven't hit that number yet.

2 (Exhibit No. 200 was marked for  
3 identification by the shorthand  
4 reporter and is attached hereto.)

5 BY MR. MEDLOCK:

6 Q. So, Ms. Marin, I have brought up  
7 what we have marked as Exhibit 200 to your  
8 deposition. It's a multipage Federal Rule of  
9 Evidence 1006 summary exhibit entitled "San Ysidro  
10 Port of Entry Impact to Port Operations." It  
11 summarizes the capacity of the San Ysidro port of  
12 entry on everyday approach. We have a queue  
13 management report and what is listed in the impact  
14 to port operations column. And I will have Kevin  
15 scroll through the pages of this summary exhibit.

16 Please tell me when an actual  
17 impact to port operations is listed.

18 (Document reviewed by witness on  
19 screen.)

20 BY MR. MEDLOCK:

21 Q. That's the last page.

22 So for every queue management  
23 report that's listed, it always -- there is no  
24 impact to port operations listed; correct?

25 A. Correct.